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# **EPA's Response to Comments on the 2000 Draft Public Involvement Policy**

**May 2003**

**Disclaimer:**

The statutory provisions described in this response to comments contain legally binding requirements. As indicated by the use of non-mandatory language such as “may,” “should” and “can,” this response to comments describes recommended procedures and approaches for conducting public involvement.

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2000 Draft  
Public Involvement Policy**

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## **1. INTRODUCTION - Public Involvement at EPA**

In February 1979, EPA promulgated regulations at 40 CFR Part 25 governing public participation for activities under the Clean Water Act, Safe Drinking Water Act and Resource Conservation and Recovery Act. In the same year, EPA began developing the Agency's first Public Participation Policy, which was issued on January 19, 1981. A draft of the Policy was published for comment in the Federal Register in April 1980.

In July 1999, the EPA Innovations Task Force issued "Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress" (EPA 100-R-99-006). In the report, at the suggestion of a FACA advisory committee, EPA stated that it would evaluate its public participation policies and regulations in light of current practices, relevant statutes, regulations and Executive Orders. During October 1999, EPA convened a cross-agency workgroup to evaluate existing public participation requirements and practices, and to make recommendations to the Administrator.

On November 30, 1999, EPA republished the 1981 Policy in the Federal Register and asked for suggestions on changes to the Policy, on the processes that work well or need improvement, and on how the Agency should involve the public in revising the Policy. Based on public comments and internal review, in its report to the Administrator, "Engaging the American People" (EPA 240-R-00-005), the workgroup recommended: updating the 1981 Policy to accommodate new statutes and regulations, changing and expanding techniques for engaging the public, changing relationships with state, local and tribal governments, and improved public access to information.

In the year 2000, members of the workgroup drafted a revised Public Participation Policy, now called the Public Involvement Policy. On December 28, 2000, the Associate Administrator for Policy, Economics and Innovation was published the draft Policy in the Federal Register and invited the public to submit comments through July 31, 2001. The central feature of the draft Policy was a description of the basic steps for conducting effective public involvement (revised in the final Policy to include a seventh step):

1. Plan and budget for public involvement activities
2. Identify the interested and affected public
3. Consider providing technical or financial assistance to the public to facilitate involvement
4. Provide information and outreach to the public
5. Conduct public consultation and involvement activities
6. Review and use input, provide feedback to the public
7. Evaluate public involvement activities

Coinciding with the release of the draft Policy, EPA charged a new cross-agency workgroup with developing recommendations to implement the new Policy and improve the

overall quality of EPA public involvement activities for release with the new Policy.

In July 2000 EPA held a two-week, Internet-based "Dialogue on Public Involvement in EPA Decisions" to learn from the public and practitioners how the Agency could improve its practices. Over 1,100 people from all 50 states, several tribes, two territories and six other countries registered for the event. The Dialogue informed development of what became the Framework document. The Framework was released as a draft Implementation Plan for a 60-day review public comment period in January 2001. The Framework focuses on the areas of:

- Developing or making available public involvement training
- Sharing public involvement information and practices
- Creating mechanisms for tracking, measuring and evaluating the effectiveness of EPA's public involvement efforts

EPA received 202 public comments on the draft Public Involvement Policy by the end of the public comment period. Sources included 26 state agencies, 12 local governments, 17 environmental organizations, 82 citizens, five industrial associations and five agricultural interests. Many of the comments raised implementation concerns and recommended improvements in how EPA plans and conducts public meetings, holds staff and managers accountable for public involvement, ensures that public input influences EPA's decisions, uses electronic communication methods, and provides feedback to participants or commenters. EPA analyzed the public comments and developed this Response to Comments document.

To protect individual's privacy, through this document comments are attributed to organizations. Unaffiliated individuals who commented are listed as "citizens #1 to Citizen #90".

The Cross-Agency Public Involvement Work Group completed its internal review of the Policy and Framework in November 2002. A Final Agency Review, which required endorsement from regional and headquarters senior officials was held in January 2003. The Administrator issued the Policy and released the Framework and Response to Comments document in May, 2003. (<http://www.epa.gov/publicinvolvement> "Recent Additions" to view the three documents.)

Staff who reviewed the comments grouped those comments into categories and developed substantive responses. Many are individual responses; some are single responses to a series of very similar comments. Whenever possible, language in the Policy is referenced. All citations from the Policy are in *italicized* type. Words that are ***new or changed*** are italicized and bolded.

Those who read this document and the Policy will easily see that the Agency seriously considered and used the public's comments to revise and reorganize the Policy.



## 2. DEFINITIONS

### Define Certain Terms

#### Washington Department of Ecology, Nuclear Waste Program:

After reviewing the Draft Policy, we would like to suggest that you clarify certain terms used frequently throughout the document. These terms include "earliest practicable times;" "early public involvement;" "timely" distribution of information, etc. While we commend the intent to involve stakeholders early in the process, we suggest that you define what is meant by "early" and "timely."

**Response:** Please see new language in the "Definitions" section of the Policy (new language in bold italics): 'Early public involvement' is no longer in the final Policy language. However the previous and current language has been used to describe and encourage opportunities for the public to contribute their input as early in the decision-making process as practicable. 'Timely distribution of information' or the definition of ***"Timely information" means distributing information sufficiently far in advance so that the interested public have enough time to review relevant material, decide whether to become involved, and make plans for that involvement. Timely applies to the availability of background information on particular issues, as well as notification of public meetings, public comment periods or other critical involvement activities.***

### Modify Policy's Definition of "Public"

#### OMB Watch:

The term "public" has many different meanings. The public includes: the regulated industry; state and local governments; school boards and planning commissions; community, social justice, and environmental groups; emergency responders (such as police and firefighters); news reporters; investors; and many other interested parties. The general public includes those who actively use information from the government (e.g., preparing a report), and those who only passively use such information (e.g., watching the news).

The public can also be divided along competency with using government information. Information "sophisticates," who include but are not limited to researchers, academics, and advocates, know where information they need is located and how to find new information. They often have personal relationships with people in agencies who can direct them to sets of information, provide access to hard-to-find documents, and provide advice and guidance on overcoming hurdles in the way of open public access. Others, mostly the "John Q. Publics," do not have special relationships with individuals in agencies or do not realize that individuals in agencies can be helpful in finding timely, relevant information.

#### Clean Air Council:

The US EPA needs to acknowledge in its broad definition of public that not all members of the public are equal in the resources they bring to public policy discussions. While industry must indeed be a stakeholder that US EPA listens to—they often bring with them great financial resources, technical know-how and political influence. Most community members and local

community organizations cannot match any of these resources. EPA needs to acknowledge these discrepancies and modify its public involvement policies to address these inequities. In order to allow these constituencies to participate meaningfully the US EPA must focus most of its public involvement resources towards these constituencies.

**Response for above two comments:** EPA agrees that the term “public” is very broad, but does not agree that the definitions in the Policy should be revised. The Policy intentionally uses the term “public” because it is such a broad term. EPA recognizes that some members of the public have more resources than others; however, this is not a definitional issue. The Policy seeks to address resource limitations in other ways, such as in the Policy’s step 3: “Consider providing technical and financial assistance to the public to facilitate involvement.”

Consultants in Toxicology, Risk Assessment and Product Safety:

EPA needs to decide whether the external scientific community is part of the “public” and what role the external scientific community should play in developing science-based regulations and policies.

**Response:** Scientific and research organizations are listed in the Policy’s definition of “public.” The role that the external scientific community should play in developing EPA’s science-based regulations and policies is outside the scope of the Public Involvement Policy.

**Clarify State Role in “Definitions” Section (additional comments and responses related to states, tribes and local governments can be found in Section XX of this document)**

Association of State Drinking Water Administrators:

The proposed policy uses the broadest possible definition for the term “public” and outlines an extensive list of organizational and representational structures to be considered “stakeholders.” The draft neither acknowledges nor makes provision for the unique role of states in the regulatory decision-making process. State government is only one of a long list of entities considered to be part of the term “public” and is characterized as an equal stakeholder along with private citizens, consumer, environmental, and advocacy groups.

ASDWA recommends that the proposed policy expand on the definition of “public” to reflect the unique role of state governments and to correct the misperception that state input into the regulatory decision-making process carries no greater weight or value than other interested parties.

Association of State and Territorial Solid Waste Management Officials:

Similarly, we found the role of States and other government entities as co-regulators understated. We will not speak for other government entities, but in our experience States are not stakeholders in the general sense addressed here, because they are sovereign governments whose views must be addressed and incorporated into decision making. In many cases, State waste programs have parallel regulatory authorities which will be used to carry out their professional environmental decisions. Those State decisions will be developed with full consideration of public participation, but will not necessarily incorporate all those public recommendations. In many cases, States and other governments must put in place implementing steps which will make federal decisions possible (e.g., institutional controls). In short, there is a discrete requirement for early, continuous federal consultation with State governments in order to develop the parameters of environmental decisions. We are not suggesting that the Agency attempt to define the State-EPA relationship in this policy document,

but to acknowledge that it exists and is different from the public policy described herein. We do not agree with the characterization at the top of page 82337 that State regulatory agencies can be “stakeholders who provide input into EPA's decisions”, because it oversimplifies and confuses this very complex relationship.

**Response to above two comments:** See new material on the roles of states in the Policy's section on “What are the Roles of States, Tribes and Local Government” (new language in bold italics):

***“State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions:***

- 1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.***
- 2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.***
- 3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions.”***

### **Revise Policy's Definition of “Stakeholder”**

Florida Department of Environmental Protection, Division of Water Resource Management:

We are concerned with the use of the term “stakeholder” in the policy. This term is used in the web site for receiving comments on the draft public policy (<http://www.epa.gov/shared> with). EPA defines the term “stakeholder” as: “Any organization, governmental entity, or individual that has a stake in or may be impacted by a given approach to environmental regulation, pollution prevention, energy conservation, etc.” (see EPA Environmental Terms at <http://www.epa.gov/OCEPATerms>). Much of the public-at-large either has no knowledge of the term, or believes the term to be biased towards those with an economic interest and the ability to make themselves heard directly by the agencies. In other words, “stakeholder” imparts a perception of specific entities and not the general public. This term also may isolate some of the public by its use. Your policy is much more encompassing and provides opportunity for involvement for anyone in the public. We believe the terms “stakeholders” and “public policy” may contrast with one another, and suggest the term “stakeholders” only be used when discussing particular projects with effects limited to a specific sector of the public. Alternatively, you could more clearly explain that the term “stakeholder” as used in your policy is applicable to the general public.

**Response:** EPA agrees that some members of the public may misconstrue the term “stakeholder;” however, the Policy clearly applies much more broadly to the public as a whole. EPA believes that the distinction between stakeholders and the public is clearly set out in the

Policy's "Definitions" section the following (new language in bold italics): ***"Stakeholders" are representatives from organizations or interest groups who have a strong interest in the Agency's work and policies.***

***"Affected parties," are stakeholders who are or may be impacted by EPA decisions.***

#### Remove Tribes from Definition of "Stakeholder"

Oregon Hanford Waste Board and the Oregon Office of Energy:

Revise the draft Policy to list the Tribes independently so they are not put in the same category as stakeholders.

Doctoral Student, University of Washington, Geography Department:

I notice throughout the policy that the term stakeholder is considered to include Tribes. Given the government to government relationship accorded to Tribes they should be called out explicitly.

**Response to above two comments:** See new material in the Policy's "Definition" section and the section on "What are the Roles of States, Tribes and Local Government" about the unique relationship and responsibilities between EPA and tribes (new language in bold italics):

***"The role of Tribes is unique in another way. Each federally-recognized tribal government is a sovereign entity that has an individual government-to-government relationship with the federal government. Therefore, it is appropriate for EPA to engage in consultation activities with such tribes in addition to activities that the Agency would undertake for the public. EPA should coordinate and consult meaningfully with Tribes to the greatest extent practicable for agency actions that may affect the tribes. This Policy complements EPA's efforts to consult with Tribes. (See Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (Nov.6, 2000.))***

***Consultation should be a meaningful and timely two-way exchange with Tribal officials that provides for the open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision making, and respect of Tribal self-government and sovereignty. The Agency should allow comment from Tribes early in the planning process and prior to making a decision. However, consultation does not imply that the Tribes or any other non-EPA entities that are consulted can stop an Agency action by withholding consent."***

City of Phoenix, Arizona, Office of Environmental Programs:

My discussions with EPA staff have indicated a bias on EPA's part that local governments may not reflect their citizenry and may not be "genuine stakeholders." If that perceived bias is true across the agency, EPA needs to reexamine what is meant by a "genuine stakeholder." Criteria for the decision of who has a "genuine stake in the local community" needs to be defined (P 82340), and local governments need to be included in that definition.

**Response:** Under the Policy, local governments are considered stakeholders whenever they have an interest in an EPA action. EPA agrees that the term "genuine stake" can be interpreted in many ways, and has deleted the word "genuine" from that section. See new material in the Policy's "What are the Roles of States, Tribes and Local Government" section (new language in bold italics):

***"State agencies, tribes and some local governments have unique roles regarding EPA's***

**programs and decisions:**

- 1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.**
- 2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.**
- 3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions."**

**Include Definition of "Underserved"**

New York State Department of Health, Center for Environmental Health:

The draft Policy should include a definition of what constitutes an underserved population and, if necessary, a methodology for determining an underserved community.

**Response:** EPA's Office of Environmental Justice currently pursues the issue of who is "underserved" on a case-by-case basis, and chooses to use the criteria of other state, federal and tribal governments.

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### **3. PURPOSES, GOALS AND OBJECTIVES**

#### **General Purposes, Goals and Objectives**

Citizen #1:

It appears that there are too many goals, for some are repetitive. Specific goals should flow out of specific purposes. Otherwise it's hard to follow the logic.

**Response:** EPA appreciates the concern regarding the clarity of the goals. The Policy's listing of Purposes and Goals may seem to be repetitive; however, it is meant to be inclusive.

Alabama Department of Environmental Management:

The draft Policy states that its fundamental premise is that "EPA should provide for meaningful public involvement" in all of its programs. We believe that the statutory and regulatory bases of each environmental program set explicit public participation requirements and procedures, which do provide the public with opportunities for meaningful involvement. The draft Policy attempts to ensure not that the public is given an opportunity for involvement, but rather, states that it should be used to "determine the appropriate nature and extent of public involvement above the basic requirements." The Public Involvement Policy needs to explicitly recognize that

decisions are predicated on regulatory requirements. Therefore, decisions are often not based on stakeholder consensus. EPA should not utilize this Policy as a means of steering public participation in regulatory or permitting programs in any particular direction.

**Response:** EPA agrees that the Policy should not be used to steer public participation in any particular direction and nothing in the Policy requires stakeholder consensus as a basis for decision making. The intent of the Policy is to ensure early and meaningful public involvement so that all members of the public can be heard.

### **Purposes of the Draft Policy**

#### **Reaffirm EPA's commitment to early and meaningful public involvement**

Citizens # 2, 13-15, 17-29, 31, 34, 36, 38-44, 46-51, 53-55, 57 (same comment provided by 37 citizens via e-mail)

I want a public involvement policy that will encourage early and meaningful public participation in all aspects of environmental decision making.

**Response:** EPA agrees that the Policy should encourage early and meaningful public participation in the Agency's decision-making processes. This comment is reflected in the Policy's section on "Purposes, goals and objectives."

#### **Ensure that environmental decisions are made with an understanding of the interests and concerns of affected people and entities-Commenters in disagreement with purpose**

Alabama Department of Environmental Management:

The vast majority of comments received by ADEM on permitting actions concern issues outside of the scope of the Department's responsibilities (e.g. zoning, land use planning, property values, nuisance, etc.). A stated purpose of the Policy is to "ensure that environmental decisions are made with an understanding of the interests and concerns of affected persons..." Given that most concerns of the public seem to be outside of the scope of the environmental regulatory process, implementation of the Policy would not appease their concerns.

**Response:** EPA agrees that the Policy may not resolve all concerns for all interested parties. However, EPA believes it is important for the public to have the opportunity to express its concerns. For EPA decisions, however, only those interests and concerns that relate to a specific EPA decision would be considered. The Policy addresses this issue by stating that outreach materials should "***Provide informational materials that clearly identify the role of the public in the specific decisions to be made.***" Further, in the Consultation section, the Policy calls for EPA to "... ***clearly identify the issues for discussion, negotiation or decision prior to and during a public involvement process, so that participants understand on which issues they should comment. EPA officials should describe clearly the type of public involvement process planned, the schedule, EPA's expectations for the outcomes of the process and the timing and type of feedback that EPA will provide.*** A goal of the Outreach portion of the Policy is "***To assist the public in understanding the reasons for Agency action, the legal framework for decision making and the significance of the related technical data so that the public can provide meaningful comments.***"

**Goals of the Draft Policy:**

**To ensure that the Agency provides the public with information at a time and in a form that it needs to participate in a meaningful way**

Iowa Department of Natural Resources, Water Supply Section:

"Goal: To ensure that the Agency provides the public with information at a time and in a form that it needs to participate in a meaningful way." EPA must realize that promulgation of several rules and guidances in a short period of time can, and usually will, result in a less thorough review by the States and other stakeholders, simply due to the sheer volume of documents to be reviewed. Staff resources at the State level are already limited, so the reviews of draft material become cursory, if done at all. This has happened over the past two years with the SDWA program, with several rules currently in the proposed stage. At one point last spring, there were over 1000 pages of rules and guidance to be reviewed at a single point in time in the SDWA program alone.

**Response:** EPA agrees that there may be many rules, policies and other issues simultaneously open for comment, sometimes driven by statutory deadlines. This comment was provided to the EPA Office of Regulatory Management and the Office of Ground Water and Drinking Water.

**To ensure that the public understands official programs and the implications of potential alternative courses of action**

Iowa Department of Natural Resources, Water Supply Section:

Goal: "To ensure that the public understands official programs and the implications of potential alternative courses of action." To assist with this effort in understanding new rules, it would be most helpful if the implementation guidance was put out in draft form with the proposed rule, and then in the final form very shortly after the final rule is published. Often, the implementation guidance is out several months, if not years, after the final rule is published, by which time the States have already notified their public of the upcoming rule, and have already developed their rules and implementation plans. Technical guidances should also be issued as soon as possible, and at least concurrently with the final rule.

**Response:** This comment was provided to the EPA Office of Regulatory Management.

**To learn from the public the information it is uniquely able to provide**

Citizens #13-15, 17-18, 20-22, 28, 31, 33, 36-38, 40-43, 46, 48-50, 53-54, 57 (same comment provided by 25 citizens)

I want a public involvement policy that will recognize and respect public's knowledge, ideas and proposed solutions.

Citizen #63:

I would like public involvement in all aspects of environmental decision making. We the people

are very diverse. We have different educational back grounds and have much to offer. Many have a technical grasp of environmental science concerns. I personally am an auditor. Because of my unique position as an auditor. When I work, I see the whole picture. I do not know all the technical aspects of everything I audit, but I have a sufficient grasp on them that allows me to suggest innovative solutions to problems discovered. I say all of this because the public has knowledge and ideas to offer, and legitimate concerns to be discussed. The public can also evaluate proposals from a myriad of angles in order to help formulate the best solutions--that are a win-win situations for all parties concerned. Please, allow the public to be involved in the decision making process.

**Response to above 26 comments:** EPA appreciates this comment. The Policy supports the idea of recognizing and respecting the knowledge, ideas and proposed solutions that the public can provide. These issues are reflected in several of the items in the Policy's "Purposes, goals and objectives" section.

**To achieve the purposes and goals, while also recognizing resource constraints, Agency officials will strive to provide for, encourage, and assist public involvement in the following ways:**

**Beginning public involvement early in the decision-making process and continuing it throughout the process as necessary to provide the best information possible-  
Comments that support this statement**

New York State Department of Health, Center for Environmental Health:

Page 6, "Begin public involvement early in the decision making process..."

We concur with this statement, however in the Hazardous Waste Program the mandated time when public involvement begins is often not early enough in the process. Many times technical staff have been working on a site for some time before the public involvement starts. This often leads to mistrust by the public because they feel they were left out of the early stages of the project. The public involvement staff should be brought into the site activities sooner.

**Response:** This comment was provided to the EPA Office of Solid Waste and Emergency Response.

**Striving to identify, communicate with and listen to all affected sectors of the public. The role of Agency officials is to plan and conduct public involvement activities that provide equal opportunity for all individuals and groups to be heard. Where appropriate, implementation of this Draft Policy will require Agency officials to give extra encouragement and consider providing assistance to some sectors, such as minorities and low-income populations, or small businesses, which may have fewer opportunities or resources to participate - Supporting comments**

New York Department of Environmental Conservation, Office of Administration:

We also commend the inclusion (p. 82337) of the objective of "striving to identify, communicate with and listen to all affected sectors of the public". This should include the recognition that state environmental agencies share with EPA the role in planning and conducting public involvement activities that provide equal opportunity for all individuals and groups to be heard. For instance, there may be situations where DEC will have greater insights for recommending extra



encouragement and assistance to some sectors, such as minorities and low-income populations, or small businesses, which may have fewer opportunities or resources to participate in EPA actions.

**Response:** EPA agrees that the role of the states needs to be clarified. See new material on the roles of states in the Policy's "What are the Roles of States, Tribes and Local Governments" and "Identifying the interested and affected public" sections (new language in bold italics):

***"State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions:***

- 1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.***
- 2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.***
- 3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions."***

Citizens #3, 13-18, 20-22, 30-31, 33, 35, 38, 40, 49-50, 53-55 (same comment provided by 21 citizens)

I want a public involvement policy that will educate community members to ensure equal participation and allow them to influence decisions and propose informed solutions. This includes regionalizing materials to ensure cultural sensitivity.

**Response:** EPA appreciates the comments. Various sections of the Policy address the issues of ensuring that EPA provides information to the public that enables them to participate in a meaningful way, equal participation, public influence on decisions and proposed solutions, and ensuring that materials are understandable to the public.

**Involving members of the public in developing options and alternatives (when possible) and, before making decisions, seeking the public's opinion on options or alternatives. Agency officials must avoid advocacy and pre-commitment to any particular alternative or option prior to decision-making, unless statutory or regulatory requirements dictate otherwise (e.g. when EPA proposes a Plan for a Superfund site)-**  
**Supporting comments**

American Chemistry Council:

Involve Stakeholders In Early Stage of Articulating Issues

Along these same lines, the Council supports the Agency's view that it should, in a transparent manner, involve the public in developing options and alternatives (when possible). As a general rule, the Council believes the Agency too often fails to involve the public in the early stages of

defining issues and options. Instead, these are presented when they are largely fleshed-out, and the public is merely invited to comment. At best, this results in delay and inefficiency, as issues and options are reworked in light of public input. At worst, it is too late in the process to fully express public views, so the Agency's treatment of issues and options, by not including public input, is less than ideal.

**Response:** EPA agrees that the Agency's decision-making processes should be as "transparent" as feasible and that the public should be involved as early as feasible in that process. This comment was provided to the EPA Office of Regulatory Management.

American Chemistry Council:

The Council also supports EPA's statement that it should "avoid advocacy and pre-commitment to any particular alternative or option prior to decision making." (p82337) While not making a pre-commitment to any particular alternative, the Agency should nevertheless early on describe the problem it intends to address as well as the significance of that problem, and indicate the Agency's general decisional criteria, with particular emphasis on distinguishing the scientific criteria from policy issues.

**Response:** The Policy includes these suggestions. See also new language in the section on "Provide Information and Outreach to the Public" (new language in bold italics): ***To the extent practicable, develop information and educational programs so that all levels of government and the public have an opportunity to become familiar with the issues, technical data and relevant science behind the issues.***

See also new language in the section on "Conduct Public Consultation and Involvement Activities: (new language in bold italics): ***"Provide guidance, resources, training, and professional assistance to Agency staff and interested delegated program partners, when feasible, to assist them in conducting or participating in public consultation and involvement activities in an effective and credible manner. This includes providing the technical, scientific, and background information in a manner that allows the involved public to understand the relevant science for the issues under discussion."***

National Association Of Home Builders:

EPA Should Not Involve the Public Simply to Reach Preconceived Conclusions. However, there is also a persistent skepticism in the regulated community that despite all the procedural checks that have been enacted into law, the agency still arrives at preconceived conclusions despite the public involvement requirements. Simply stated, the regulated community does not feel its voice is being heard.

**Response:** EPA agrees that public involvement should occur early enough to allow the public to feel that EPA considered the concerns expressed. This comment was provided to the EPA Office of Regulatory Management.

**Making every effort to match the design of public involvement programs with the complexity and potential for controversy surrounding the issue being addressed, the segments of the public affected, the time frame for decision-making, and the overall desired outcome of the public involvement process - Support comments**

Miami University, Department of Communication:

I'm also glad to see a recognition in the Goals and Objectives that a "one size fits all" approach

to public participation is inappropriate. Addressing the wants and needs of individual communities is the only way public participation can be effective. Of course, someone will have to do some research to find out what those wants and needs are.

**Response:** EPA agrees that it is important to identify the needs of potentially affected communities. The Policy recommends that the Agency use questionnaires, surveys, interviews and other means (subject to appropriate approvals) in the section on "Provide information and outreach to the public." These can be effective means for identifying the wants and needs of communities.

### **Add New Goal to Produce Better Decisions through Public Involvement**

#### International Association for Public Participation:

You should include a statement in the Purposes and Goals of the Policy that public participation can improve the quality, acceptability, feasibility and durability of decisions. This is the fundamental reason for incorporating public participation. Fostering trust and meeting legal requirements are by-products of a good decision process.

#### Wisconsin Department of Natural Resources:

In the list of goals for public involvement processes (p. 82337 center column), the agency focuses on a list of appropriate process-oriented and relationship-focused goals (fulfill legal requirements, foster trust, solicit assistance, anticipate conflict, keep people informed, etc.). However, the policy is strangely silent on a major reason for involving others -- the key goal of making better decisions, decisions that better reflect broad perspectives and therefore better meet the varied needs of the country and its people.

#### Sierra Club, Committee on Environmental Justice:

...public participation makes for better policy, We reject the arguments that public participation is "running amok" and that participation is at all in tension with proper deliberative decision making. Indeed, we believe strongly that participation, and the ideas and information that flow from it, only enhances the deliberative process. But perhaps more importantly, public participation is also the fundamental element of procedural justice that must necessarily be a part of every agency decision. The purposes, goals and objectives listed in the proposed Policy reflect this dual importance, yet the Sierra Club is somewhat skeptical that the proposed Policy will meet the stated objectives.

#### Children's Environmental Health Network:

However, two key inter-related purposes of this policy are absent from this list. The Agency does not mention what one would think would be over-riding concerns for undertaking these efforts: improved decisions as a result of public involvement and more effective protection of the public interest and thus public health and safety. For example, one would expect that the Agency's goal should be not just to "ensure that environmental decisions are made with an understanding of the interest and concerns of affected people and entities" but that the decisions themselves are improved and thus better meet the public interest as a result of public participation.

Though the Federal Register notice includes statements about the benefits for other agencies, statements that public involvement will benefit EPA policies is absent.

Without such goals, public participation efforts by the Agency are little more than empty

exercises.

**Response to above four comments:** EPA agrees and has added language to reflect the concerns expressed in these comments in the "Purpose, Goals...." section (new language in bold italics): ***"Improve the acceptability, efficiency, feasibility and durability of the Agency's decisions."***

Sierra Club, Committee on Environmental Justice:

In reality, we believe that enhanced public participation increases the efficiency of decision making in the sense that an open and intelligible process are more likely to lead to results accepted by the public. Anger and distrust are potentially avoided with proper public participation processes.

**Response:** EPA agrees that effective public participation can lead to results that are more widely accepted by the public. EPA plans to evaluate this and other aspects of public involvement processes and their outcomes.

**Add New Goal to Address Public Concerns**

Sierra Club, Committee on Environmental Justice:

In this section [Conduct public consultation and involvement activities], the Policy misses the mark. For fuller and more meaningful public participation, the goals of the agency should not be merely "to understand the interests and needs of the affected public," and "to provide for the exchange of information and views," but rather it should be the goal of the agency to make sure that the interests of the public are affirmatively addressed. In public participation, it is not the ultimate goal of the public to be simply understood - the public is much more outcome-oriented. And for that reason, to foster public participation, it is important to address the issues raised. This is of special importance to low income communities and communities of color. Participation for participation's sake is insufficient motivation for people with otherwise difficult and busy lives. Public participation that leads to demonstrable results will lead to better public participation.

Guild Law Center and Michigan Environmental Justice Coalition:

However, the GLC and the MEJC believe that the EPA must do more than simply "understand" public interests and concerns to make public comment meaningful. Instead, the EPA must ensure that its decisions reflect and actively address public interests and concerns, either by making a decision that resolves those concerns or by providing detailed explanations of the reasons that certain problems would not or could not be addressed. As the EPA itself notes, "issues that are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review." 65 Fed. Reg. 82335, 82337 (2000). Unless affected citizens are persuaded that the EPA has made its best effort to accommodate their interests and concerns, such "time-consuming review" is almost inevitable. We urge the EPA to make a stronger commitment to finding a solution or decision that actually reflects and accommodates public comments and concerns.

Environmental Defense:

EPA should regularly consult with the public to ensure that its activities reflect the public's concerns, instead of just involving the public during the policy-making process.

**Response to above three comments:** EPA agrees that the public participates in government processes for the purpose of influencing decisions. EPA expects that making public involvement more meaningful will provide additional opportunities for the public to impact the public on Agency decisions. In any given case, of course, a particular stakeholder's view may or may not be adopted, or considering all the input EPA may make a decision that is different from the recommendation of any single stakeholder. EPA plans to evaluate the effectiveness of its public participation activities and implementation of the Policy. In addition, EPA expects to develop training aids to assist staff in using public comments and providing feedback to commenters. Please see the evaluation and training sections of the Framework for Implementing EPA's Public Involvement Policy released with this Policy at <http://www.epa.gov/publicinvolvement/policy2003> EPA will also include recommendations on how to regularly consult with the public in public involvement training materials for EPA staff.

### **State Up Front EPA's Mission to Protect Public Health and Environment**

#### Clean Air Council:

The US EPA needs to acknowledge in the preamble to its public involvement policy that its statutory responsibility is to protect public health and that this priority needs to be reflected in all of its actions.

#### Minnesota Pollution Control Agency:

EPA should clarify that, while committed to improving opportunities for public involvement in its decisions, EPA's primary mission and the reason for the actions it proposes is to protect human health and the environment. EPA understands what is at stake when it proposes an action. It has the authority to exercise stewardship on behalf of the environment—a huge responsibility. EPA should seek public involvement as a means to improve, mitigate or mediate the actions it determines are needed. The Policy should state EPA's mission and how EPA will assimilate the public's view while meeting its mission.

**Response to above two comments:** EPA agrees that the Policy should refer to EPA's primary mission in relation to public involvement. See revised language in the "Introduction" section of the Policy (new language in bold italics): ***"EPA's mission is to protect human health and the environment. To achieve that mission, EPA needs to integrate, in a meaningful way, the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process. Public involvement also promotes democracy and civic engagement, and builds public trust in government."***

***EPA has long been committed to public involvement. The fundamental premise of this Policy is that EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. They also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and informs its final decisions. At the same time, EPA should not accept any recommendation or***

***proposal without careful, critical examination."***

### **Adopt the International Association for Public Participation's Core Values and Code**

Wisconsin Department of Natural Resources:

EPA should adopt and incorporate the core values and code of ethics of public participation as identified by the, which were developed over several years with input by practitioners from throughout the world.

**Response:** The goals in the Policy were in part based on the International Association for Public Participation's core values and code of ethics.

### **Public Should Contribute to, Not Affect EPA Decisions**

McNulty Group:

"...public to become involved and affect the Agency's decision..." This seems to put the public and the Agency on opposing sides of the table. It implies the Agency may make a decision and then the public gets to modify it. Better to have the public become involved and \*contribute\* to the Agency's decision. Again, as said above, public involvement should provide information that contributes to a wise, informed decision. If it does that properly, it becomes a part of the decision making process rather than something that modifies a decision already made.

**Response:** EPA agrees that one of the goals of public participation is to have the public contribute to the decision. EPA has revised that sentence in the "Purposes, Goals and Objectives" section (new language in bold italics): ***"Effective public involvement will make it easier for the public to contribute to the Agency's decisions, build public trust, and make it more likely that those who are most concerned with and affected by Agency decisions will accept and implement them."***

### **EPA Should Involve the Public in its Decisions**

Citizen #83:

I would like a public involvement policy that would allow the public to discuss proposals with the parties involved and would take the public opinion into account on any decisions made. In the United States, I see more and more people losing their voice in proposals that will affect their lives and the lives of others. They are not ignorant people, but because they have no financial stakes in the decision. More and more, it is the people that will be affected financially that are listened to and that's not right. Private corporations and the government no longer recognize the health and emotional effects as priorities. In order to ensure that every aspect of proposals is considered, the public needs to be given more say in decisions. And sometimes it turns out that they may have a solution or proposal that no one has thought of.

Citizen #84:

The EPA must involve public input into their policy.

Citizen #85:

I want a public involvement policy because I believe that a democratic government depends on the full range of opinions and participation of all its voters and citizen.

Citizen #86:

Your decision effects us all therefore we should have a say in what is decided.

Citizen #87:

Public involvement or awareness should be just as, if not more, important then the government or industries that have influence on the health of our environment. Involve us in decision making processes!! It's our space too.

**Response to above five comments:** EPA agrees that the Agency should involve the public in its decision-making processes. Please also see response to Minnesota Pollution Control Agency on page 15. The Agency expects that through implementation of this Policy, the public will have increased and fair opportunities for early and meaningful involvement in EPA's decision-making processes.

**Other Purposes or Goals:**

Citizen #2:

I would like to see majority rule. Not government majority but the voice of the people. Environmental policy in the Bush Administration and the EPA under its guidance has swerved away from general public sentiment. If this administration is not going to do the people's bidding, it would be a great benefit for the people to, in a more tangible way, effect policy themselves. I support public involvement within all the decisions of the EPA.

**Response:** This comment makes a suggestion that is outside the scope of the Policy.

Citizen #3:

Your agency should leave politics out of your decisions and solely act to protect the environment, which I said before is what you are there for. You should protect the interests of the public, and not just the oil, gas and nuclear industry. Our environment is fragile and so are we.

**Response:** EPA agrees that the protection of the environment is very important. This comment, however, is outside the scope of the Policy.

Washington State University:

When EPA makes a final decision, always remember, and be respectful of the fact, that it is local citizens who fully experience the consequences of decisions on a daily basis, not the decision makers in distant regional and national offices. The bottom line is that the public's personal health and welfare is at stake every time the EPA makes a decision. They are always aware of this, as well as the reality that they have to live with decisions, whether they agree with them, or understand them, or not.

Most importantly, if you really want to be successful at public involvement, learn to LISTEN, not just speak. This will help the EPA to become aware of the difference between what the EPA intends the public to hear and what the public actually hears.

**Response:** EPA agrees that it is important to develop skills to hear what the public is saying. In addition, EPA expects to develop training aids to assist staff in these areas.

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## 4. APPLICATION OF THE POLICY

### Apply the Policy to all EPA offices and programs

Citizens #13-15, 17-18, 20-22, 31-32, 38, 40-43, 46, 48-50, 53-54, 57 (same comment provided by 22 citizens via e-mail)

I want a public involvement policy that will be followed in all EPA offices and programs.

**Response:** EPA agrees that the Policy should be followed in all EPA offices and programs. In the Policy's section "When does this Policy Apply?" the Policy states (new language in bold italics): ***"This Policy applies to all EPA programs and activities."***

### **Policy Should Apply in All Cases Where the Public Has an Interest or is Affected**

International Association for Public Participation:

When enumerating "when does this policy apply?" the Policy should begin by stating that it applies in all cases where the public has an interest or is affected. Some of these situations will have legal drivers, but the policy should not list this reason first. Often the challenge is to conduct effective participation along side the legal requirements; legal provisions for public participation are seldom sufficient in themselves. This is an area that your office can assist the Office of General Counsel so that the legal minimum doesn't get interpreted as the sole criteria. For example, a 30-day comment period need not preclude preliminary dialogue with interested and affected public or presentation of draft provisions in advance of the formal document.

**Response:** EPA agrees that the legal requirements for public participation should not be the sole criteria for application of the Policy. However, the Policy cannot be applied in all cases where the public has an interest or is affected because some areas such as litigation are not appropriate for public participation. The section of the Policy "When Does the Policy Apply?" has been revised (new language is in bold italics):

***This Policy applies to all EPA programs and activities. In programs or activities where the public is already meaningfully involved, EPA can use this Policy to enhance that public involvement. Where the existing level of public involvement needs to improve, this Policy provides suggestions for how to move forward. Finally, this Policy can serve as a model for building public involvement into new programs as they are developed.***

***The activities where conducting meaningful public involvement should particularly be considered include:***

- S EPA rulemaking, when the regulations are classified as Economically Significant Actions (under the terms of Executive Order 12866)
- S EPA issuance or significant modification of permits, licenses ***or renewals***
- S Selection of plans for cleanup, remediation or restoration of hazardous waste sites or Brownfields properties
- S ***EPA's decision on whether to authorize, delegate or approve states or local governments to administer EPA programs consistent with the relevant regulatory requirements for each program ( Note: Tribes seeking approval to administer environmental programs under EPA statutes generally also seek "treatment in a similar manner as a state (TAS)" status from EPA. Appropriate opportunities for public participation are contained in the relevant statutory and regulatory provisions establishing a TAS process. Consult with the Office of Regional Counsel or the Office of General Counsel, and/or the American Indian Environmental Office for assistance.)***
- S All other policy decisions that are determined by the Administrator, Deputy Administrator or appropriate Assistant, Regional or Associate Administrator to warrant ***public***



**participation in view of EPA's commitment to** involve the public in important decisions

S ***The development of significant information products (as the Office of Environmental Information has defined them in Appendix 2: Definitions)***

### **Clarify How Certain Situations May Influence the Design of Public Involvement Activities**

Golden Gate University, Environmental Law and Justice Clinic:

Finally, there are several actions that could be clarified or improved upon. The section entitled *What Should EPA Do to Ensure Full and Meaningful Public Involvement*, contains a statement that reads, "[t]he issues, locations, potential environmental and public health consequences of the activities, potential for controversy... will influence the design of the public involvement process." However, it does not express what kind of influence it will have. For example it could be interpreted to mean that if there is a likely potential for heated controversy, then public hearing should be avoided. We would not endorse such a stance, as we believe it would be necessary to openly address such a conflict. Therefore it may be useful to clearly define your intention.

**Response:** EPA agrees that this statement needs clarification in the Policy. See new clarifying language in that section (new language in bold italics): ***"For instance, enhanced opportunities for public involvement should be created for those situations in which there is the potential for greater environmental or human health consequences or controversy."***

### **Edit Statement Describing Consequences of Inadequate Participation**

Wisconsin Department of Natural Resources:

We would suggest strengthening the statement about the consequences of inadequate participation (p. 82338, column 1, first unbulleted paragraph) to read: "However, lack of adequate participation or lack of effective means for participation can result in agreements or policies that do not necessarily reflect or consider the interests or needs of communities or constituencies that will be most impacted by them."

**Response:** EPA agrees with this comments and has made the suggested changes (new language in bold italics): ***"A lack of adequate participation or of effective means for participation can result in decisions that do not necessarily reflect or consider the interests or needs of communities or constituencies that will be most impacted by them."***

### **"Use all reasonable efforts to ensure public is informed" on technical products- Supporting comments**

American Chemistry Council:

The Council is pleased that the Office of Research & Development (ORD) has taken steps toward a more open process in developing its technical documents, most notably in its initiatives for better engagement with the public in developing draft files for the Integrated Risk Information System (IRIS). We strongly encourage EPA to use "all reasonable efforts to ensure that the public is informed" (at 82337) and to seek input from stakeholders on IRIS and other important technical EPA products.

**Response:** This comment is outside the scope of the Policy. It was provided to the EPA Office of Research and Development.

### **Clearly Define the Limited Extent of Public Involvement in Certain Decisions**

Washington State University:

Like the 1981 policy, this is still a very clear, top down approach. Such an approach unintentionally communicates that full public involvement is not the goal EPA truly intends to achieve. This idea is reinforced with statements like "when appropriate," "at the agency's discretion" or "when the regulations are classified as significant" (what does that mean by the way?). Tell the public when full involvement is not feasible and provide honest, straight forward explanations as to why.

State it up front, e.g., "this policy doesn't not apply to some situations as listed and explained below," rather than tucking in "when appropriate" or "at the agency's discretion," and hoping the public won't notice. Not only will the public always notice and resent such smoke screens, but they will also find the assuming "father knows best, don't question it" underlying tone disrespectful and insulting.

**Response:** EPA disagrees. The Policy is meant to expand and enhance public involvement, not limit it. The Policy provides EPA the discretion needed to enable the Agency to design public involvement processes to match the scope and complexity of the issues.

Washington State University:

Public involvement is frequently misunderstood to include a vote or some level of authority in decision making. Be very clear up front about the fact that the EPA seeks advice from the public but that the EPA holds all the reigns of decision making power. The promise of a vote that is never realized promotes distrust.

**Response:** EPA agrees that clarifying the roles of EPA and public participants is fundamental. The Policy as written, makes clear that "involvement" does not mean "vote." Further, the Policy's "Introduction" section now includes clarifying language on the Agency's mission and use of public input. See revised language in the "Introduction" section of the Policy (new language in bold italics): ***"EPA has long been committed to public involvement. The fundamental premise of this Policy is that EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. They also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and informs its final decisions. At the same time, EPA should not accept any recommendation or proposal without careful, critical examination."*** In defining public involvement the Policy states: The term "public involvement" is used in this Policy to encompass the full range of actions and processes that EPA uses to engage the public in the Agency's work, and means that the Agency considers public concerns, values, and preferences when making decisions. Clearly, the decisions are those of the Agency.

## **Make Any Required EPA Public Involvement Changes through Rule Making Process, not through Policy**

### Alabama Department of Environmental Protection:

ADEM believes that EPA's existing public participation requirements for rulemaking and permitting, which are closely mirrored by state requirements, are more than adequate. If EPA feels improvements are needed, the improvements should be accomplished through the regulatory process such as with the upcoming revisions to the major source operating permits programs, 40 CFR Part 70. This would allow interested parties the opportunity to review and provide comments during a formal rulemaking process and to adjudicate the final decision, if they so desired. Formal adoption of these requirements through rulemaking also would lessen any potential ambiguities that could occur if they are solely implemented through a vague Policy. In this vein, the Department ardently opposes the imposition of public involvement procedures via this Policy similar to those reportedly under consideration for the aforementioned Part 70 revisions. (e.g. mandatory public hearings upon request, copies of complete facility files maintain in the locality of a source, a prohibition against copying charges for documents, etc.) ADEM plans to comment on these changes when appropriate, should they come to fruition. The Department's position is that each program should be responsible for implementing its own public participation program and that a Departmental-wide approach can adversely effect some programs. For instance, RCRA updated its version of the public participation program in 1998 to reflect the needs of its program. This current proposal mirrors the 1998 RCRA program in many aspects, but in some instances is overbearing and impractical from both work and cost aspects.

**Response:** The Policy provides guidelines for all EPA programs; it is not directed to the states. It imposes nothing additional; it outlines the seven steps necessary for good public involvement, but does not replace, nor can it override regulatory requirements. The Policy provides the discretion to tailor public involvement to the situation, so that unnecessary process need not be provided. However, the premise of the Policy is that greater involvement will generally lead to better decisions.

## **Policy Should be Required of EPA**

### Golden Gate University, Environmental Law and Justice Clinic:

As it stands now the Draft Policy is not legally enforceable, but is instead, "the EPA's statement of its strong commitment to full and meaningful public involvement in Agency activities." However, because the policy does not, "confer any legal rights or impose legal obligations on any member of the public, EPA or any other agency," the EPA is not actually being held accountable to the public. Unfortunately, in our experience, a strong commitment to the public is not always enough. Conversely, citizen suit provisions in environmental laws are an invaluable tool in empowering the public to be actively involved in environmental protection. Building such a provision into the final Policy, making it into a Regulation, or requiring states to incorporate the Policy into State Air and Water Quality Plans submitted to the federal government, would make it clear that the Agency is prepared to stand by, and be held to its words, and truly rely on input from the public.

### Citizen #4:

Finally, I notice that "The Draft Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA or any other agency. Talk about lip service.

National Association Of Home Builders:

EPA's Public Involvement Policy Should Be Binding and Enforceable on the Agency. Even EPA fully concedes the deficiencies it has had with its current Public Participation Policy. In fact, EPA identifies two areas of particular concern: lack of agency coordination from one activity to the next, making it difficult for the rest of the agency to benefit; and, second is the tendency to focus on single initiatives rather than developing a broader program perspective. NAHB believes that these problems will not be corrected unless the policy is made binding and enforceable on the agency.

The current proposal relies too heavily on EPA staff discretion and flexibility, and is unenforceable by the public. Making the policy an enforceable administrative rule would help ensure the effectiveness of the policy and give the public a greater voice in EPA's regulatory processes.

City And County of Denver, Department of Environmental Health:

Discretionary Application of the Policy Should be Limited to Ensure Consistency and Implementation. As a public entity, DEH understands that one-size-fits-all rules often lack the adaptability needed to address particular needs in specific circumstances, and some flexibility will be required. But, since the Draft Policy still "relies heavily on the sound use of discretion by Agency officials," (65 Fed. Reg. 82338), it is not "legally enforceable," and it does not "impose legal obligations upon . . . [the] EPA or any other agency," *id.* at 82338, we are concerned that it will be ignored. The EPA should consider strengthening the policy, making certain aspects mandatory rather than discretionary. We feel that the new policy needs to....Limit the discretionary application by the agency to promote consistency and implementation.

Sierra Club, Committee on Environmental Justice:

.....the Policy has little weight. As mere guidance, it isn't binding. So it ultimately rises only to the level of a suggestion, which does not require anyone in any agency to do anything. Moreover, by allowing assistant and associate administrators to "identify and address those activities and major decisions where application of this Draft Policy is appropriate" the Policy makes explicit that not only are the suggestions not binding, they are discretionary. It isn't at all clear why the Policy would not be applicable to all normal agency decision making.

Doctoral Student, University of Washington Geography Department:

The policy, as stated, is non binding. No penalties are incurred if the policy is not followed, nor are there incentives for those who do invest in good public involvement. This is a significant problem because without clear incentives or enforcement, the potential impact of the policy is weakened. I would urge you to reconsider the non-binding status of the policy.

Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee, Inc.

The existence of a formal policy does not ensure public involvement in practice; EPA Headquarters intends to ensure that all regional offices adopt and abide by this policy, including compliance by grant recipients

Southwest Workers Union:

The draft policy says it's not legally enforceable. If it's just left up to the administrator, it will be inconsistent. If not law, there will be too many loopholes in it and it will yield inconsistent results. This policy leaves too much discretion to the administrator.

**Response to above 8 comments:** EPA disagrees. The Policy is not a rule and is not intended to be mandatory. It is guidance for EPA staff and managers that will be supported with information and training; it does not apply to grant recipients. Agency guidances provide guidelines on how EPA staff should implement programs, and allow discretion in applying the policy to particular situations. EPA believes that a rule would likely be too rigid and not allow enough flexibility to address the wide range of activities with which the Agency is involved. The Policy is intended to increase the consistency and effectiveness of EPA public involvement practices. The Agency hopes to establish incentives and rewards for those at EPA who carry out outstanding participatory processes.

Children's Environmental Health Network:

On January 19, 1981, the EPA published its first Agency-wide Public Participation Policy "to ensure that managers plan in advance needed public involvement in their programs, that they consult with the public on issues where public comment can be truly helpful, that they use methods of consultation that will be effective both for program purposes and for the members of the public who take part, and finally that they are able to apply what they have learned from the public in their final program decisions." (46 FR 5736, Jan. 19, 1981) (emphasis added)

The Network questions the use of the terms "needed" and "where public comment can be truly helpful" and believes they should be deleted from future iterations and descriptions of the policy. The Network would be interested in understanding which EPA programs do not "need" public involvement. It is disdainful for government employees to believe it is their role to make the advance judgement that public comment would not be "truly helpful." These phrases run counter to the Agency's stated intent.

**Response:** This comment is outside the scope of the Policy. It refers to language included in the 1981 Policy. The Draft Public Involvement Policy that EPA published for comment in December 2000 does not contain this language.

**Include Specific Public Involvement Requirements in Inter-Agency Agreements**

U.S. Army Center for Health Promotion & Preventive Medicine:

Coming from a federal agency perspective, DOD, project managers will typically follow EPA guidance; but too often, project managers will only do what EPA says is mandatory. Although this public involvement policy is not legally binding, I suggest that the spirit and "requirements" of this policy be included in any/all other legally binding documents between EPA and DOD (Federal Facilities Agreements, etc.). Sometimes, DOD will go above and beyond what EPA outlines as mandatory, but too often, DOD will only do what is absolutely necessary. Include this

public involvement policy as one of the critical elements DOD must embrace. This goes for projects where states and/or tribal governments take the lead, too.

Suggest including in EPA/ DOD agreements that an evaluation of public involvement will be part of the agreement. Is DOD doing what they agreed to do?

**Response:** A policy, such as the Public Involvement Policy, is not a rule and, therefore, does not contain mandatory requirements for EPA or its regulatory partners. Further, EPA cannot unilaterally include provisions in legally binding agreements between EPA and DOD. Such agreements are the result of negotiations between the two agencies. The Policy encourages EPA and its regulatory partners to consider EPA's Public Involvement Policy in their work.

U.S. Army Center for Health Promotion & Preventive Medicine:

Suggest being more specific about how the public can be involved in developing options/alternatives. This goes back, again, to my observation that DOD rarely does anything that is not clearly spelled out in EPA guidance/ policy. If this policy could reference specific tasks or stages that the public can be involved in (e.g., development of risk assessment assumptions, identification of pathways, cleanup alternatives, etc.) , DOD would be more likely to consider it.

**Response:** Because EPA engages in numerous program activities and because this Policy is guidance only, it is not feasible or appropriate to include in this Policy a list of public involvement processes specific to each type of activity. It is the responsibility of the EPA office conducting the activity to determine the best type of public participation for their activity.

### **Conduct Public Workshops on Draft Policy**

California Department of Toxic Substance Control:

Finally, DTSC encourages that U.S. EPA engage in an open dialogue with the public on this draft policy. As with most policy decisions, that final product will have a direct affect on the public we serve. It makes sense for U.S. EPA to conduct public workshops in California and elsewhere to explain the draft policy and receive public comment, in order that the final product is more reflective of public need. DTSC would be happy to work with U.S. EPA in coordinating this effort.

**Response:** EPA followed up on this suggestion with EPA Region 9 in San Francisco. EPA also held a two-week Internet-based dialogue that had participation from all 50 states. The Agency was only able to hold a public meeting on the draft Policy in Region 6.

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## **5. FUNCTION (NOW STEP) 1. PLAN AND BUDGET FOR PUBLIC INVOLVEMENT ACTIVITIES**

### **Expand Policy's Plan and Budget Section**

Sierra Club, Committee on Environmental Justice:

As perhaps the simplest and most obvious of the six "functions" for public participation, the Policy spends very little time and attention to this area. The Policy recognizes the importance of advance planning, early notice to stakeholders, adequate time and resources, and evaluation. Yet, in terms of implementing the Policy, this is perhaps the area in which the greatest improvements could be made. In practice, notice is seldom early, time and resources are seldom very available, and evaluations seldom actually performed.

**Response:** EPA agrees that the Agency needs to improve how it plans and budgets for public involvement. The Policy is intended to increase the consistency and effectiveness of EPA's public involvement practices. Resources for public involvement are of course constrained by the Agency's budget and compete with other Agency activities. EPA intends to address the issues raised above in training provided to EPA staff as well as in efforts to evaluate EPA's public involvement activities.

Rutgers University, Center for Environmental Communication:

PI should be considered integral to program planning, not merely an additional planning activity. Although the policy stresses early involvement, it might make more explicit that planning for PI should occur in the context of larger program planning efforts. This will not only facilitate earlier involvement and increase resource effectiveness, but it makes it more likely that PI will become part of agency programs, rather than a less effective addition to agency efforts.

National Environmental Justice Advisory Committee, Enforcement Subcommittee:

There are additional costs and logistical demands when involving the public. These and other potential challenges of public participation [such as a potential increase in time and resources, revised decision making time lines, training to familiarize Agency staff with these methods, building the skills of both the public and the Agency staff to work in such collaborative forums, building trust, etc.] need to be explicitly addressed. Suggestions for dealing with challenges should be presented.

**Response to above two comments:** EPA agrees that public involvement should be considered integral to program planning, and added new language in the "Plan and Budget" section of the Policy (see new language in bold italics): ***"When preparing budget and planning documents for regulatory and non-regulatory programs, Agency officials should make provision for: resources and staff time dedicated to public involvement activities; time for conducting and evaluating public involvement activities; and staff and resources to provide technical assistance to the involved public where appropriate (see the Policy's Step 3, "Consider providing technical or financial assistance to the public")."***

## **Define Public Involvement Objectives in Planning Phase**

Wisconsin Department of Natural Resources:

In the first function, Planning For Public Involvement Activities (p. 82338-82339), the policy lacks the essential step of planning: Defining the objective of public involvement in the project or decision. Will the objective be collaborative problem solving, assessing impacts of decision options, understanding the values and issues of the affected public, evaluating the necessity of an action, acquiring some specific types of information, negotiating between interests? Without defining the specific objectives, staff will not be able to appropriately make other decisions under this function. Objectives drive tools, schedules, etc.

International Association for Public Participation:

The Draft Policy's first "basic function" for effective public participation is to plan and budget for public involvement activities. This is important. However, in order for public participation to be

incorporated into project planning and budgeting a public participation plan must be developed that answers questions such as the objectives and the appropriate/desired level of public impact. Does the issue warrant information dissemination, consultation, involvement, collaboration or some other level of impact? The IAP2 Spectrum is an excellent tool to evaluate what the Agency's "promise to the public" should be and how to match public participation activities to it. The objective of including the public in this determination should also be part of this initial step.

**Response to above two comments:** EPA agrees that defining the objective of public involvement is an essential step of planning, and added the following new language to the "Plan and budget" section: ***"Objectives of public involvement in the project or decision, and the appropriate level of public involvement (For example, does the issue warrant information dissemination, interactive consultation or more collaborative approaches?)."***

### Better Define Public Involvement Steps in the Process

#### Wisconsin Department of Natural Resources:

Also in the Planning Function, under the bullet about setting key decisions, EPA could improve the policy by clarifying that the public involvement process should be tied to and designed along with the decision making process, including clarification of significant intermediate decision making points. "Key decisions" can be interpreted to mean simply the final and major decisions, when earlier, intermediate decisions can eliminate or affect options for those later decisions. Finally, under this Planning Function, the policy would be clearer if you include examples of types of intermediate planning steps that are often "ripe" for public input - identifying issues, developing options, assessing impacts, evaluating and picking options, etc.

**Response:** EPA agrees that public involvement is needed at intermediate decision making points, and added new language to that section in the content of planning documents, shown in bold italics (the first bullet): ***"Key decisions subject to public involvement, along with their significant intermediate decision making points (for example, identifying issues, developing options, assessing impacts, evaluating and choosing options);"***

#### International Association for Public Participation:

A second aspect of planning for public participation is for the agency to clearly determine the internal decision making process and time line. It is remarkable to members of the public how often the Agency and applicant cannot articulate what the decision process is, the criteria for decision making, the expected time line, or who will be involved in the decision process. The most experienced public participation practitioner or dedicated member of the public cannot know how to be effective if the decision making process is unclear. The Draft Policy's function 5(c) should expand its discussion of process so the "engagement process" and the decision process are one in the same.

**Response:** EPA agrees that the Agency should clearly identify its internal decision-making process and time line for the public. See new language in the sixth bullet in the "Plan and Budget" section (shown in bold italics): ***"Proposed schedule for public involvement activities that is consistent with the timing of the decision process."*** See also new language in the Consultation section, c. Content: ***"Agency officials should clearly identify the issues for discussion, negotiation or decision prior to and during a public***



***involvement process, so that participants understand on which issues they should comment. EPA officials should describe clearly the type of public involvement process planned, the schedule, EPA's expectations for the outcomes of the process and the timing and type of feedback that EPA will provide. If possible, the public should be involved in determining the design of the processes."***

## **EPA Needs Adequate Public Involvement Funding for/from Specific Activities**

Guild Law Center and Michigan Environmental Justice Coalition:

we believe that the EPA should consider the possibility of generating funds earmarked for public participation wherever the opportunity arises. For example, where the EPA itself is responsible for issuing permits, the agency should review the possibility of setting permit application fees at a level that would ensure the availability of funds for expanded public participation, including provision of technical assistance.

**Response:** This comment is outside the scope of the Public Involvement Policy. EPA does not currently have authority to determine fees and collect them for a particular purpose or raise funds for public involvement. EPA funds public involvement out of the funds designated by Congress for specific programmatic purposes. Many states do use fees to help fund permitting programs, and EPA encourages them to explore using such fees to provide resources for public involvement.

Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit, Hazardous Materials and Waste Management Division:

One area where the proposed policy seems deficient relates to sites where long-term actions are included in the remedy. ....The policy can incorporate these long-term considerations. On page 15 Of 40, the Goal 1 recommended action could specify that EPA request funds for continuing public involvement activities at sites whose remedies include long-term actions.

**Response:** EPA agrees that public involvement opportunities should be available throughout the course of an EPA action, including long-term actions. According to EPA's Superfund program, Superfund's Technical Assistance Grant (TAG) program provides assistance throughout the site remediation process. EPA can award a TAG grant related to a National Priority List site at any time until the site is deleted from the priorities list.

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## **6. FUNCTION (NOW STEP) 2. IDENTIFY THE INTERESTED AND AFFECTED PUBLIC**

### **"Lesser Actions" also Warrant Identification of the Public**

Sierra Club, Committee on Environmental Justice:

... the Policy should not assume that "lesser actions" do not warrant identification of interested parties. Instead, interested parties should be allowed to decide whether the actions are in fact minor. These are precisely the situations in which distrust of the agency will fester.

**Response:** The term "lesser actions," which refers to actions that are minor and ministerial in nature, such as the change of a corporate address on a permit, no longer appears in the Policy.

### **Provide More Details in this Section of the Policy**

Wisconsin Department of Natural Resources:

Identify the Interested and affected Public, this language is general and the lack of specificity raises some environmental justice questions. For example, will one legal notice in the appropriate newspaper be adequate for a notice of public hearing on a permit?

**Response:** EPA does not agree that this section is too general. Because of the wide range of circumstances covered by the Policy, EPA does not believe that specifying these details would be useful. The Policy cannot provide specific recommendations for all situations, but recommends that EPA programs use a variety of methods in order to effectively reach the public. Many such recommendations are contained in the Policy's "Provide information and outreach" section.

**Partner with Local Organizations and Government Organizations to Identify Public**

Environmental Defense:

The Agency may also want to co-plan and co-sponsor meetings with local community organizations (not just environmental groups, but also religious, public health, minority groups and so on). Such partnerships can attract other citizens who are more inclined to work with a local group than a large government agency, thereby possibly attracting a larger and more diverse group of participants.

New York State Department of Health, Center for Environmental Health:

Identify the interested and affected public - underserved.

Partner with local health departments. Often local health departments:

- know the people in the community;
- can provide information on how the community is likely to respond to an issue;
- can speak the language of most of the people in the community; and
- have a positive relationship with the community that could overflow to a "partner" agency.

New York State Department of Health, Center for Environmental Health:

Different programs within EPA should reach out to each other and to other Federal and State agencies for help in solving issues of how to reach a community. In many cases an agency may already be working with a community and the "new" program can gain insight about the community and receive help in building a relationship with the community.

Talk with WIC program coordinators to determine productive ways of reaching the community.

**Response to above three comments:** EPA agrees that the Agency should partner with local organizations to identify the interested and affected public. See new language added at the end of the Goals section: "***Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to develop and promote public involvement,***" and the methods portion of "Identify interested and affected public" section of the Policy, re: participating in the events of others and reaching the members of organizations through their publications. Such collaborative efforts will also be included in EPA training.

**Use Enhanced Communication Strategies to Identify Public**

Michigan Environmental Council:

In identifying interested and affected members of the public, the agency should strive not only to proactively seek out new constituencies but also to fully integrate existing relationships into new communications strategies. Agency notification processes should be enhanced to reflect the increasing influence of new technologies. In the end, the public involvement process should seek to reveal consensus solutions.

**Response:** EPA agrees that Agency staff should continue to involve existing participants and use enhanced communication methods to identify the public. See new language in the above response. Also, the Agency intends to expand its use of the Internet as an information tool, while maintaining other dissemination methods for those without access. Public involvement processes may, but do not always, lead to consensus solutions.

### **Expand Policy's Description of Alternative Methods for Identifying Public**

Sierra Club, Committee on Environmental Justice:

The Policy should be more accommodating of alternate methods of identifying members of the public with interests.

**Response:** EPA disagrees that the Policy restricts the use of alternative methods of identifying the public. In the "Identify the interested and affected public" section, the Policy recommends *"using other comprehensive or creative means that consider community structure, languages spoken, local communications preferences..."*

Guild Law Center and Michigan Environmental Justice Coalition:

The Draft Policy is primarily focused on developing standard "contact lists" for various programs, activities and projects. The GLC and the MEJC believe that identifying parties interested in particular subject areas in advance may be helpful, but such pre-identification will not be possible in many cases. For that reason, the Policy should include more specific information/guidance on conducting community outreach on a project specific basis and on a tight time line. For example, the Draft Policy discusses participation at public events, such as conferences, workshops, meetings, fairs and festivals, as one way of providing information to the public. This outreach method should also be referenced as a means of identifying interested and affected parties. In fact, when major decisions are being made, we believe that the EPA should actively seek opportunities for public speaking, participating in training seminars, and appearing at public meetings and events as a means of gathering names of potentially interested parties and creating a notification list for the proposed action.

**Response:** EPA agrees that the methods contained in the "Provide information and outreach" section are also applicable to the "Identify the interested and affected public" section, and added new material in the latter section under "Method"(revised bullet): ***"Participating in workshops, community meetings, public events, etc. to share information with potentially interested groups and individuals, and enable them to request additional information on the particular program, activity or project"***. In addition, training materials will assist staff in recognizing and using all available methods.

### **Identify People in Geographic Proximity to a Site**

Guild Law Center and Michigan Environmental Justice Coalition:

The EPA should also recognize that simple geographic proximity may be an appropriate basis for identifying potentially interested parties. For example, where a cleanup, remediation or

restoration plan for a hazardous waste or Brownfields site is proposed, people living within the immediate vicinity of the site are likely to be interested in the plan and should be placed on any notification list.

**Response:** EPA agrees that geographic proximity is an appropriate basis for identifying potentially interested parties, especially for site-specific public issues.

### **Expand Policy's Description of Using Surveys to Increase Public Involvement**

#### Guild Law Center and Michigan Environmental Justice Coalition:

In this section of the Draft Policy, the EPA mentions surveys aimed at understanding a community's level of awareness regarding certain environmental issues as one measure of identifying interested parties, but provides no concrete plans for using this information to increase public participation. We believe that such surveys may be useful in identifying communities that need additional assistance in learning about and understanding the environmental issues that affect them. Once such areas are identified, however, the EPA should make every effort to focus its assistance and outreach on these communities, to educate them about relevant environmental issues and otherwise facilitate public participation in agency decision making.

**Response:** EPA agrees that surveys can also be used to gauge the need for public education and outreach. See new language in the second bullet of section 2b in the "Identify the interested and affected public" section of the Policy (in bold italics): *"Using questionnaires or surveys to find out levels of awareness and the need for tailored public education and outreach."* In addition, EPA intends to include methods for the use of specific tools will be included in public involvement training for EPA staff.

### **Use Risk Perception Mapping to Identify Public**

#### University of Michigan- Dearborn, Great Lakes Environmental Research Laboratory:

I would like to point out that my earlier comment was offered to demonstrate how risk perception can be used as the basis for identifying the socio-perceptual and geographical boundaries of an affected population, and thus is an effective means upon which to build a population-specific outreach program. ...The purpose of that work was to demonstrate an ethnographic means of public participation, called "Risk Perception Mapping," that is sensitive to the role that cultural variation and risk perception can play in a community's participation in environmental management.

**Response:** EPA appreciates being made aware of this technique, and intends to include it as a tool in reference materials for EPA staff.

### **Ask People Who are Already Involved to Help Identify Public**

#### Citizens for Responsible Water Management:

Could it ask these persons [persons who have shown interest in its operations] to identify others who might contribute useful input on particular issues?

**Response:** EPA agrees that people who are already involved can use their networks to expand the number of people invited to participate. See the various mechanisms for gaining input and

the expanded language on methods in the "Identify the interested and affected public" section of the Policy (new language in bold italics): ***"Asking those who attend events what, if any, interests are missing."***

### **Better Manage/Update Contact Lists**

#### National Association Of Home Builders:

EPA Should Provide More Effective Outreach Mechanisms. EPA asserts that it seeks to create more effective and flexible contact mechanisms to ensure better public outreach and involvement. However, NAHB has experienced many difficulties with EPA contact lists and other outreach tools in the past. Although identifying proper contacts is a difficult and ongoing task, EPA should develop more effective tools to insure contact information is accurate and up to date. NAHB, for instance, has over 850 state and local Home Builder Association in its federation and has found few of these groups have ever been identified as groups interested in EPA actions. This is true despite the fact that the construction industry regularly participates in EPA proceedings and is significantly affected by countless EPA actions.

#### Citizens for Responsible Water Management:

Has the EPA taken adequate steps to ensure that addresses of concerned citizens and groups don't 'fall off' lists? Is adequate effort made to request feedback from each at regular intervals? (It has been my experience that some established groups are 'lost in the shuffle' by EPA where occasional communication to them could elicit useful insights.)

**Response to above two comments:** EPA agrees that the Agency should effectively manage and update contact lists. EPA seeks to work through partners, and must sometimes depend upon membership associations to help alert and inform their constituencies of potential impacts. See new language added at the end of the Goals section: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement,"*** and the Policy's "Identify the interested and affected public" section suggests (new language in bold italics): ***"EPA should update each list frequently..."*** EPA also agrees that obtaining feedback from participants can be helpful; however, Federal agencies' ability to request regular feedback from participants can be impacted by the Paperwork Reduction Act. Public involvement training for EPA staff is intended to address the need to update lists.

### **Problems with Contact Lists as Primary Identification Method**

#### Sierra Club, Committee on Environmental Justice:

....the Policy purports to recognize the importance of this particular element of the public participation process, but other than the development of a "contact list" the Policy fails to provide much in the way of accomplishing any improvement. Indeed this may be the weakest part of the proposed Policy, especially in terms of low income and minority communities.

The reliance on contact lists inherently guarantees that participation will be limited to those individuals who find their way onto the lists. Contact lists are inevitably too narrow. Moreover, despite the fact the Policy wishes to "ensure that all points of view are represented on the lists," the development of such lists tends to presuppose what those interests are. Sorting or generating lists by category of interest or by geographic area, as the Policy suggests for example, will always be underinclusive. In practice, such contact lists are heavily weighted to

interests with the wherewithal to position themselves on the lists. Industry, for example, with lawyers, lobbyists, and consultants know which lists are being created and for what purposes. Community members, however, find themselves on such lists typically only by happenstance, and usually much later in the process. The bottom line is that agencies should work on the presumption that many more persons than can be represented on a contact list may have interests in or may be affected by a decision.

**Response:** EPA agrees that all interested and affected people may not be represented on contact lists, and EPA should use a variety of methods to identify the public. The Policy's "Identify the interested and affected public" section suggests *"using other comprehensive or creative means..."* to identify the interested public. See new language added at the end of the Goals section: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement."*** EPA also added new material in the identify section under Methods: ***"Participating in workshops, community meetings, public events, etc. to share information with potentially interested groups and individuals, and enable them to request additional information on the particular program, activity or project."*** In addition, public involvement training materials are intended to assist EPA staff in recognizing and using all available methods for identifying the public.

Sierra Club, Committee on Environmental Justice:

While some [contact] lists are under inclusive, others are sometimes so broad in subject matter that community members are inundated with so much information and so many requests for participation that sorting through it all is too time consuming and difficult. Indeed this is a major problem for underserved communities. In such communities, where participation rates are low, agencies look to the few individuals who are participating and ask them to do more rather than reach out to a wider community.

**Response:** EPA agrees that the Agency needs to improve its use of contact lists and to reach out to a wider community. The Policy recommends using many methods to identify potentially interested people beyond those already involved, including partnering with local organizations. See new language in the above response.

Sierra Club, Committee on Environmental Justice:

In practice, both types of lists, under inclusive and over inclusive, are updated infrequently. And in both cases, the methods for the development of contact lists tend to be event oriented (persons who attended prior meetings, for example) or essentially word-of-mouth. Most lists are retired when the proceedings relating to the initial purpose are completed. For these practical reasons, contact lists must not be the full extent of identification process.

**Response:** EPA agrees that the Agency should effectively manage and update contact lists. The Policy's "Identify the interested and affected public" section suggests (new language in bold italics): ***"EPA should update each list frequently..."*** The Policy also recommends using a variety of methods to identify and involve the public; see above responses. EPA intends to address the issues raised above in public involvement training provided to EPA staff.

**Add Local Stakeholders to Contact Lists**

Reichold, Inc.:

The EPA needs to expand its list of stakeholders to small local municipal governments, rural communities, tribes, and urban communities by compiling a list of local governments, churches/synagogues, community centers, etc.

**Response:** EPA agrees that the Agency should add such local contacts to its stakeholder lists, especially for community-based or site specific projects. See new language added at the end of the Goals section: ***“Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement.”*** EPA also added new material in this section under Methods: ***“Participating in workshops, community meetings, public events, etc. to share information with potentially interested groups and individuals, and enable them to request additional information on the particular program, activity or project.”*** EPA intends to address the issues raised above in public involvement training provided to EPA staff.

### **Use Post Cards to Identify Interested Parties from a Larger List**

#### Minnesota Pollution Control Agency:

The MPCA understands that some EPA programs use post-cards in an effort to locate interested parties from a larger mailing audience. The EPA offers to send a more detailed notice on request. This seems like a good idea, if additional lead-time for processing and mailing is available.

**Response:** EPA agrees that it can be beneficial to use post cards to identify interested people from a larger mailing list, and intends to add this suggestion to EPA training materials as a best practice to consider.

### **This Section of the Policy can be Interpreted to Contain Excessive Requirements**

#### Alabama Department of Environmental Management:

The Department believes this proposal may be interpreted to require project managers to initiate and maintain contact lists for each facility, geographic areas, and specific industries. These lists may be required to be formed not only through sign-up sheets during major modifications, permit issuances, etc. as currently required, but also through pro-active surveys, questionnaires, and research conducted by the project managers; again for each facility... This language may be interpreted to mean that the project manager is required to initiate and maintain a contact list for each facility, then incorporate this information into other lists that should be broken into geographic areas and industries. Furthermore, this proposal will require project managers to send out surveys and questionnaires to aid in construction of these lists and then once the lists are established, use the list to send out announcements of involvement opportunities, available information, etc. This may eventually be interpreted to mean making periodic updates of each facility's progress or activities available to everyone on the contact list.

**Response:** The Policy is not a rule, but rather a set of recommendations for how to effectively involve the public in EPA's decision-making process. The Policy is guidance for EPA staff, and although EPA encourages states to use the Policy in developing their own practices, the Policy does not apply to state employees. While the Policy does not require either EPA or state managers to take any actions, EPA believes that efforts should be made to inform the public about EPA decisions that are of interest to them.

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## 7. FUNCTION (NOW STEP) 3. CONSIDER PROVIDING TECHNICAL OR FINANCIAL ASSISTANCE TO THE PUBLIC TO FACILITATE INVOLVEMENT

### Broaden Policy's Discussion of Assistance to the Public

#### Wisconsin Department of Natural Resources:

Providing Assistance To The Public (p. 82339), this function is laudable but should be broader to include more than just technical or financial assistance. There should also be a goal of tailoring the public involvement process to the process needs of participants. While sometimes that might include financial or technical assistance, it also might mean changing venues, methodologies, meeting formats or considering privacy concerns and cultural differences when involving the public.

**Response:** EPA agrees that the Agency should try to identify and accommodate the process needs of public participants. This suggestion is included in the Policy's "Conduct public consultation and involvement activities" section (new language in bold italics): ***Identify and select public consultation or involvement processes appropriate for the scope of the decision and the time and resources available. When possible, consult or involve the affected public to ensure that the approaches selected consider and, if appropriate, accommodate the potentially affected parties' needs, preferences, schedules and resources, as well as the Agency's needs.*** Overcoming the public's barriers to participation is intended to be part of training materials.

### More Clearly Emphasize Technical and Financial Assistance in the Policy

#### US Department of Interior, Office of Surface Mining:

On page 82338, item 3, third column, the draft mentions that EPA should: "Consider providing technical or financial assistance to the public to facilitate involvement." The term "consider" is not very emphatic, particularly in the context of spending agency funds. If this is a desirable aspect of public involvement, and if EPA wants it to be administered uniformly and fairly, the Agency may want to emphasize it more clearly in the document.

**Response:** EPA agrees that the draft policy did not emphasize provision of technical or financial assistance. EPA revised and clarified this section of the Policy. The Policy recommends that the Agency consider providing such assistance as one of the seven steps for conducting effective public involvement. EPA's allocation of funds is a decision made by EPA offices when they prepare their budgets, and is discretionary, depending among other things, on total resources available. Therefore, EPA does not believe that more prescriptive wording is appropriately justified.

### Inform the Public about Assistance / Ensure that Assistance is Available Early in the Process

#### Shoshone Natural Resources Coalition:



It would also be advantageous to the public to make them aware of the assistance that is available to them through the EPA as stated in the Draft Public Involvement Policy. If more people were aware of the assistance and resources available to them, they would be more willing to be involved. This should be done as early in the process as possible so the public can take advantage of the help BEFORE they have to formally respond to issues.

Lake County, Illinois, Health Department:

If financial assistance is available for public involvement, the time line for submitting, reviewing and approving an application needs to be such that funding is available for potential use at the beginning of a decision process.

**Response to above two comments:** EPA agrees that the Agency should inform the public about the availability of assistance and try to make that such assistance available early in the public involvement process, and added the following new language in the "Consider providing technical or financial assistance" section (new language in bold italics): ***"It is also important for the Agency to identify those situations where members of the affected public may not have the requisite knowledge or resources to directly participate or obtain expertise to engage in meaningful involvement. In such situations EPA may have the authority to take special measures such as providing technical or financial assistance to facilitate effective participation. When such assistance is needed and available, EPA should announce its availability as early in the process as possible, and clearly describe the process and timing for accessing it."*** EPA intends to address this issue in public involvement training provided to EPA staff.

### **Use Internal Communication Mechanisms to Determine Best Methods for Providing Assistance**

New York Department of Environmental Conservation, Office of Administration:

We support (p. 82339) the continued provision of technical or financial assistance to the public to facilitate involvement, particularly to members of the public who lack the ability to participate in an effective or timely manner in EPA public consultation or involvement activities. For this to occur, internal communication mechanisms must be established for EPA managers to consult with knowledgeable staff (some staff may be located in state agencies) to determine the most feasible and legal methods to follow.

**Response:** EPA agrees that the Agency needs to use internal communication methods to determine the best methods for providing assistance. The Policy recommends working closely with regulatory partners in state, local, tribal, and federal agencies.

### **Assistance Should Come with No Strings Attached and be Directed by the Community**

Sierra Club, Committee on Environmental Justice:

The technical and financial assistance, however, should come without agency imprimatur or strings attached. It is important, from a community perspective, that the assistance be independent and trustworthy. That it should be community driven and directed. And that the assistance should allow for advocacy rather than being required to be rigorously "impartial." The purposes of the assistance should not be so limited, rather the assistance should be given with the simple purpose that communities express themselves more effectively. Too often, the "assistance" provides only another layer of difficulty, if not distrust, for an under represented

community - often not helping to express the community's views, but merely the views of the so-called assistant.

**Response:** EPA agrees, and the Policy states, that financial assistance should be structured to allow stakeholder groups or other members of the public to participate effectively in the action. However, it should be noted that statutory restrictions govern how EPA can provide financial assistance. The way in which funds can be used depends on the specific statutory basis for the grant. Groups or individuals seeking financial assistance should discuss their concerns with the appropriate EPA official at the time they seek assistance to ensure that they understand any restrictions. EPA plans to address methods of ensuring that assistance that is provided serves the community's needs appropriately in training.

### **Support for Both Technical and Financial Assistance - Overall**

#### Clean Air Council:

There is an underlying belief that simply providing the public with information somehow empowers them to effectively participate in policy debates or in the more local decisions that affect their neighborhoods. Information is not power—it is simply a tool. In order to use that tool effectively community based non-governmental organizations (NGOs) need access to financial and technical resources to allow them to understand the information provided by agencies such as EPA and how to use it to protect their communities.

#### Environmental Defense:

By providing technical or financial assistance to people or groups who lack the adequate resources to participate effectively, EPA can ensure that everyone is able to deliver their comments. Financial resources can also go to providing additional technical assistance; for example, it is sometimes useful for citizens to have access to independent economic analyses or consultants to help them organize and formulate their ideas and submit useful comments. EPA should structure its technical assistance grants to determine when and how such independent analyses and other studies can be done with the Agency's assistance.

**Response to above two comments:** EPA agrees that community groups sometimes need financial and technical assistance, and the Policy recommends that EPA programs consider providing such assistance. However, it should be noted that statutory restrictions govern how EPA can provide financial assistance. Groups or individuals seeking financial assistance should discuss their needs and concerns with the appropriate EPA official at the time they seek assistance to ensure that they understand any restrictions.

#### Sierra Club, Committee on Environmental Justice:

This should be more than mere consideration. Technical and financial assistance is absolutely essential in an ever-increasing number of highly complex and technical agency decisions. Many decisions now require an extraordinary effort on the part of community lay persons simply to understand the issues involved, and even more effort to provide effective and timely comment. The Sierra Club understands the statutory and budgetary limitations on such funding, but every effort must be made to assist communities in these increasingly technical decisions. This is critically important in low income and minority communities which have traditionally not had access to the levels of expertise necessary to participate fully in modern environmental decision making.

**Response:** EPA understands this concern and the Policy encourages programs to support financial and technical assistance whenever possible. Decisions regarding financial and technical assistance are made by the program office, in light of its total available resources, competing needs and statutory authorities.

Iowa Department of Natural Resources, Water Supply Section:

Where appropriate, implementation of this Draft Policy will require Agency officials to give extra encouragement and consider providing assistance to some sectors.... This is a good concept, providing all comments received are treated with equal weight.

**Response:** The purpose of this Policy is to encourage public participation by all interested sectors, not to afford particular sectors special considerations. To clarify this point, the language in the "What Are the Purposes, Goals and Objectives of This Policy" section has been revised to read (new language in bold italics): "***Identify, communicate with and listen to all affected sectors of the public (Agency officials should plan and conduct public involvement activities that provide equal opportunity for all individuals and groups to be heard. Where appropriate, Agency officials should give extra encouragement and consider providing assistance to sectors, such as minority and low-income populations, small businesses, and local governments, to ensure they have full opportunity to be heard and, where possible, access to technical or financial resources to support their participation.)***" One of the Policy's goals is to "foster, to the extent possible, equal and open access to the regulatory process for all interested and affected parties." EPA believes that efforts to encourage public participation by encouraging and providing assistance to some sectors should foster equal, not disparate, treatment of all interested parties.

OMB Watch:

Training and assistance grants. EPA should provide support grants to environmental organizations, libraries, nonprofit technology assistance centers, and other entities, to strengthen their ability to access and use environmental information and to teach the public how to access and use it.

**Response:** EPA agrees that it would be beneficial to partner with organizations and libraries to increase public access to environmental information. This message was shared with EPA's Office of Environmental Information.

**Include Cost of Providing Financial/Technical Assistance as Part of Cleanup Costs**

Guild Law Center and Michigan Environmental Justice Coalition:

To the extent permitted by law, the EPA should also consider including financial support for technical assistance to communities in reviewing and commenting on cleanup, remediation or restoration plans as part of the costs of the cleanup, remediation, or restoration of hazardous waste or Brownfields sites.

**Response:** EPA agrees that that public involvement opportunities should be available throughout the course of an EPA action, including long-term actions. According to the Superfund Program, EPA initiated the Technical Outreach Services For Communities (TOSC) program in 1994 to provide technical assistance to communities affected by hazardous waste that was not listed or pre-listed on the National Priorities List and thus could not obtain assistance through any of EPA's established programs. Since that time, TOSC has been providing free assistance to communities on issues related to environmental investigation,

technical assistance, cleanup and other challenges communities may face as a result of living near hazardous waste facilities. The TOSC program is a non-advocate technical assistance program conducted through EPA's Office of Research and Development and supported by universities and colleges in EPA's Hazardous Substance Research Centers. Communities seeking assistance from TOSC can view the TOSC website at: <http://www.toscprogram.org>.

### **Provide Technical Assistance Grants for Long-term Involvement at Cleanup Sites**

Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit  
Hazardous Materials and Waste Management Division:

One area where the proposed policy seems deficient relates to sites where long-term actions are included in the remedy. ....The policy can incorporate these long-term considerations.... Goal 3 on page 18 of 40 could also include funds for stakeholders to maintain involvement at these sites. Specifically, TAGs could be provided to allow stakeholders to maintain data bases and files on these sites.

**Response:** This comment is outside the scope of the Policy, however it was shared with EPA's Superfund program.

### **Create Formal Referral System for Community Groups to Obtain Technical Assistance**

Guild Law Center and Michigan Environmental Justice Coalition:

We also commend the EPA for recognizing that technical assistance is often required for community groups to effectively participate in agency decision making. However, we are concerned that the Draft Policy relies too heavily on ad hoc recommendations of technical assistance sources. We urge the EPA to develop a more formal referral system for community groups who need expert assistance or advice on the issues being debated by the agency.

**Response:** EPA appreciates the comment and, according to the Superfund Program, it intends to make efforts to increase public awareness of the availability of technical assistance.

### **EPA Must Provide Staff and Resources for Providing Technical Assistance to the Public**

Guild Law Center and Michigan Environmental Justice Coalition:

In addition, we believe that the EPA must focus more energy on finding funding for technical and direct financial assistance. For example, the Draft Policy states that the EPA may provide technical assistance through "[a]ccess to Agency experts or contractors to obtain information and analyses as resources allow." Draft Policy, 65 Fed. Reg. at 82339. The EPA must, at minimum, ensure that its own staff has the time and resources to provide technical information and advice to concerned members of the affected public. As discussed earlier in the Draft Policy, the EPA's budgetary planning documents should reflect support for public participation and, in particular, the need to make agency officials, as well as agency experts and consultants, available to affected members of the public.

**Response:** EPA agrees that Agency staff should have the time and resources to respond to the public's requests for general and technical information. See new language in the "Plan and budget for public involvement activities." section (in bold italics): "***When preparing budget and planning documents for regulatory and non-regulatory programs, Agency officials should make provision for: resources and staff time dedicated to public involvement activities; time for conducting and evaluating public involvement activities; and staff and***

***resources to provide technical assistance to the involved public where appropriate (see the Policy's Step 3, "Consider providing technical or financial assistance to the public")."***

### **Fund "How-to" Manuals that Help the Public Participate in Specific Regulatory Activities**

Guild Law Center and Michigan Environmental Justice Coalition:

In addition, we believe that the EPA should set aside funding for broader methods of providing expertise to the general public. For example, we suggest that the EPA specifically commit to developing "how to" or "self help" manuals, such as The Proof is in the Permit, a handbook developed by the New York Public Interest Research Group Fund, Inc. and the Earth Day Coalition, Inc., that guides communities through reviewing and commenting on Title V permits under the Clean Air Act. Such resources can provide assistance and guidance to a large number of people at a relatively low cost.

**Response:** This comment is outside of the scope of the Policy. Decisions to fund such projects are office and region specific. EPA agrees that such resources can be helpful, and EPA's web site contains links to the above mentioned handbook, as well as other EPA and external resources, at [http://www.epa.gov/shared\\_with/involvework.htm#manuals](http://www.epa.gov/shared_with/involvework.htm#manuals).

### **Create a Database that Describes Information Resources for the Public**

Guild Law Center and Michigan Environmental Justice Coalition:

We also suggest that the EPA's commitment to "[c]ollection and dissemination of information on outside sources of funding or technical assistance" and to "[c]ollaboration with non-governmental organizations and other information brokers" explicitly include a commitment to developing an easily accessible database of information resources. Although these resources should include EPA experts, we believe that the primary focus should be on outside expertise and resources, such as experts within other federal, state and local agencies, within university research centers, and within non-governmental agencies. While we recognize that the EPA itself contains a great deal of expertise, we believe that environmental justice communities are likely to be wary of bias within the agency and to find outside experts more credible.

**Response:** EPA agrees that making information of this kind more accessible is a desirable goal. The Policy's "Consider providing technical or financial assistance" section suggests several examples of methods which may be used to provide assistance to the public; the two activities mentioned in the comment are part of that list of suggestions. In addition, the EPA web site contains helpful information on funding sources such as a link to the catalog of federal assistance programs at <http://www.cfda.gov/>. The EPA web site also contains a tutorial on the grant application process at <http://www.epa.gov/seahome/grants.html>. General information and forms are located at: [http://www.epa.gov/ogd/grants/how\\_to\\_apply.htm](http://www.epa.gov/ogd/grants/how_to_apply.htm). This site also includes links to each of the Regional Offices' grants web pages. Superfund grants are listed at <http://www.epa.gov/superfund/resources/assistance/index.htm>. The handbook at the following web site explains how to apply for a Superfund Technical Assistance Grant <http://www.epa.gov/oerrpage/superfund/tools/tag/download/book1.pdf>. The following site explains how to manage these Superfund grants <http://www.epa.gov/oerrpage/superfund/tools/tag/download/book4.pdf>. For environmental justice related grants, see <http://es.epa.gov/oeca/main/ej/grants.html>

## **Create Hotlines that Help the Public Find and Use EPA Information**

### OMB Watch:

Training and technical assistance hot lines. EPA should maintain telephone hot lines to assist the public in finding, obtaining, and using EPA information holdings.

**Response:** This comment is outside of the scope of the Policy. EPA maintains many topic-specific and regional office telephone hotlines, and also uses short-term hotlines for geographically focused and area limited calling. A list of these hotlines can be seen at <http://www.epa.gov/epahome/hotline.htm>. This comment was shared with EPA's Office of Environmental Information.

## **Create Hotlines that Advise the Regulated Community on Compliance Issues**

### OMB Watch:

Hot lines should also provide advice to the regulated community on compliance with federal regulations and required information submissions.

**Response:** This comment is outside of the scope of the Policy. EPA maintains over 30 virtual compliance assistance centers for specific industrial sectors through the National Compliance Assistance Clearinghouse. This clearinghouse is on the EPA web page at <http://cfpub.epa.gov/clearinghouse/preview.cfm?ResourceID=23>. The EPA's telephone hotlines provide information; however, contract employees operate many EPA hotlines and cannot provide advice on compliance issues.

## **Oppose Financial Assistance - EPA Should Not Give Preferential Treatment**

### City of Austin, Texas, Water and Wastewater Utility:

On Page 82339 (65 FR 82339) of the Federal Register, the Policy states “. . . Assistant and Associate Administrators, Regional Administrators and Office Directors may have authority to provide funds to outside organizations and individuals for public involvement activities associated with rules under development.” This is alarming because it raises serious ethical issues that will bias regulatory development. Taxpayer dollars should not be used to finance one set of stakeholders at the exclusion of others. When the EPA funds public involvement, it should do so through the Federal Advisory Committee process where all stakeholders are treated (funded) equally.

### American Water Works Association:

Funding for organizations: This is especially alarming when many advocacy groups are as well-funded as any other organization. Many advocacy groups choose to spend their funds on media relations and public relations efforts rather than funding their members to travel for public involvement processes. This is alarming because it raises serious ethical issues that will bias regulatory development. Taxpayer dollars should not be used to finance one set of stakeholders at the exclusion of others. When EPA decides to fund public involvement, it should do so through the Federal Advisory Committee (FACA) process where all stakeholders are treated (and funded) equally.

### National Association Of Home Builders:

NAHB members frequently feel they are at a decided disadvantage in the regulatory process when EPA actively assists groups who oppose NAHB members' goals. In the new proposal, for instance, EPA plans to provide "technical and financial assistance" to various groups. However, this financial "assistance" may well translate into preferential treatment for groups who share EPA's position on a particular issue. Likewise, EPA's efforts at "outreach" are often viewed by industry as an attempt to stir up supporters for EPA's viewpoint and to "stack the deck" against industry groups. This despite the fact that many of these so-called "public-spirited" environmental groups are in fact powerful special interest groups with large financial resources. NAHB members feel that EPA's support for these groups means that industry will never get a fair opportunity to participate in a meaningful way, and NAHB opposes such powerful and unaccountable discretion at the hands of the agency. NAHB believes that any such assistance should be closely monitored or the effect of the policy will be the continued deterioration in public confidence in the agency and a further sense of frustration, distrust, and dissatisfaction with governmental actions.

NAHB is concerned that EPA's policy will be used to provide financial and technical support for various groups whose ideas could not otherwise succeed in the marketplace of ideas. The policy appears aimed more at empowering environmental groups than in promoting responsible economic growth and development policies.

**Response to above three comments:** EPA cannot and does not promote certain groups over others, but works to ensure that all interested parties can participate and provide input. In some cases, this may lead to EPA funding of community groups, some public interest groups, local governments or others that otherwise do not have the staff or resources to effectively participate in EPA's decision-making processes. Although EPA uses FACA committees to obtain collective or group advice and recommendations on numerous issues, EPA does not seek group advice on most decisions.

### **Support Financial Assistance - Amount Should be Equivalent to Private Parties' Expenditures**

Golden Gate University, Environmental Law and Justice Clinic:

...we believe that some form of public participation grant is absolutely essential to facilitate adequate citizen involvement. This funding should be equivalent to what interested private parties spend in the process.

**Response:** EPA agrees that, to the extent that funding is available, financial assistance grants are useful. However, EPA disagrees that the amount should be equivalent to private parties' expenditures.

### **Support Financial Assistance - Provide Scholarships to Attend Meetings**

Citizen #5:

The public must be able to attend public stakeholder meetings. EPA should provide significant advance notice of public stakeholder meetings, and should do its best to make sure the affected public is invited to the meeting. This includes advertising the meeting in public spaces (other than just the Federal Register notice), providing scholarships for the public to attend these meetings, and possibly holding meetings in "the field" as opposed to Headquarters or regional EPA offices.

**Response:** EPA appreciates the comment. These ideas are included in the Policy.

## **Provide Grants to Organizations to Increase Civic Capacity/ Work with Political Scientists to Implement Such Grants**

### Georgetown University, Government Department:

...you can expand and more strongly commit yourself to one of the suggested responsibilities for Regional Administrators (last section of draft document -- focusing on who is responsible for implementing this policy --- suggestion "j") --- "Provide small grants to representative public groups for needed public involvement work; where feasible and appropriate." I would argue that grants can and should be provided to organizations whose sole/main purpose is to increase "civic capacity," i.e., the ability of people to communicate with public officials and help to govern their own lives. This small grant program could be expanded to include both small and medium size grants (i.e., any where from \$5000 to \$100,000) for work on building civic capacity. Who could help you with such implementation? I would also argue that there are political scientists in each of the ten EPA regions that have expert knowledge about citizen participation (about who participates, who doesn't, and why). Furthermore, many of these political scientists have the skills to help EPA develop such programs, tailoring the "Civic Capacity Grants" somewhat to the particular concerns in any given region. For a further idea of how such a program could be structured, you may want to look into an innovative program being done at the local level in Arlington County, Virginia. The program, "The Arlington Neighborhood College," attempts to encourage underserved members of Arlington to become a part of the larger group of citizens actively involved in civic matters here in their community --- by giving these citizens skills through training exercises in small-group and large-group settings.

**Response:** EPA appreciates this suggestion, and added a second goal to this section of the Policy: ***"To use such assistance to help build capacity to understand complex technical issues and enable people to participate substantively in EPA's decision-making processes."*** Capacity building beyond participation in EPA activities is outside of the scope of the Policy. Small grant funds for participating in EPA decision-making processes are highly limited.

## **Clarify that Some States are Prohibited from Providing Financial Assistance**

### Association of State and Territorial Solid Waste Management Officials:

... the description of function number 3, "Consider Providing Technical or Financial Assistance to the Public to Facilitate Involvement" at page 82339 includes items sometimes specifically excluded by State statutes such as compensated advisory committees. The Agency should revise this language to be clear that this listing is exclusively one of federal program support, and that State and other governments should be expected to address these resources intensive vehicles on the basis of State priorities and laws.

**Response:** This policy provides guidance to EPA; EPA does not and cannot require states or other governmental agencies to follow these guidelines.

## **EPA Should Notify State Agencies of Any Grants Given by EPA**

### Iowa Department of Natural Resources, Water Supply Section:

financial assistance - The State primacy agency for a given program, such as the drinking water program, must be notified of grants EPA provides to various agencies within their state, to avoid



funding duplicate programs or redundant training courses. There have been instances where both the State and the EPA Region was unaware of the projects paid for by the federal grants.

**Response:** EPA appreciates this comment, but it is outside of the scope of the Policy. This comment was referred to the EPA Office of Ground Water and Drinking Water and Office of Grants and Debarment.

### **EPA Needs to Define Implementation Criteria for Providing Assistance**

#### Minnesota Pollution Control Agency:

It sets goals where the Policy admits no implementation criteria yet exist. For example, it suggests the need to provide financial assistance to facilitate more public involvement and the need to budget for this—but lacks specifics. The MPCA believes that anticipating participation levels, proving financial hardship of interested parties, then providing assistance to these parties would be extremely difficult.

**Response:** EPA agrees that decisions regarding selection of groups for funding are not easy. The Policy provides suggested criteria for providing financial assistance; however, it does not include detailed screening mechanisms.

### **Assistance Criteria Should Include Residency in Environmental Justice Community as a Factor**

#### Guild Law Center and Michigan Environmental Justice Coalition:

Believe that technical assistance and expert advice is the key to effective citizen input in environmental decision making, particularly in environmental justice communities. For that reason, we urge the EPA to include, as one factor in determining whether financial assistance should be awarded to a particular applicant, whether an applicant is a resident of an environmental justice community.

**Response:** EPA agrees that technical assistance is important, especially in environmental justice communities. The Policy's "Consider providing technical or financial assistance" section includes suggested criteria for providing financial assistance, and also states (new language in bold italics): "***In general, the Agency should make special efforts to provide assistance to groups that may have fewer opportunities or insufficient resources to participate.***"

Environmental Justice related grants are listed at <http://es.epa.gov/oeca/main/ej/grants.html>. For information about EJ small grants, see <http://es.epa.gov/oeca/ocej/grlink1.html>.

### **Financial Assistance Criteria Should Include Local Governments as Eligible**

#### City of Phoenix, Arizona, Office of Environmental Programs:

If EPA is considering criteria for providing formal assistance to facilitate public involvement, mechanisms should exist for providing community involvement/technical resources and grants to local governments. Local governments have had a much more difficult time accessing grants because EPA seems to give preference to community groups and activist organizations. Even the "Fees for Copying" Section singles out private citizens, public interest organizations or small businesses as being worthy of having fees waived, but not small communities which should also be included in this category. Further, grants such as Technical Assistance Grants (TAGs) should also be available for local governments, which are often the first information resource for citizens.

**Response:** EPA agrees that some local governments may need assistance to facilitate their involvement in EPA's decision-making processes, and added new language to the Policy's "Consider providing technical or financial assistance to the public to facilitate involvement" section (new language in bold italics): *"There are numerous ways to **assist** members of the public **and small local governments** who lack the ability..."* Another change was made in the section on "Purposes, goals and objectives": *"Where appropriate, Agency officials **should** give extra encouragement and consider providing assistance to some sectors, such as minorities and low-income populations, **small businesses, and local governments, to ensure they have full opportunity to be heard...**"* Please note that statutory and regulatory requirements may affect the availability of funding; for example, Technical Assistance Grants under § 117 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cannot be awarded to local governments; see 40 CFR 35.4020(b)(5)(2001). This comment was shared with the EPA Superfund Program and the Office of Congressional and Intergovernmental Relations. Further, please note updated language: *Fees for Copying: **In responding to a request for records, the Agency will follow its regulations implementing the Freedom of Information Act ("FOIA") at 40 CFR Part 2. The Agency may waive the fees associated with a FOIA request, pursuant to the criteria listed at 40 CFR 2.107(l), if disclosure would contribute to public understanding of government operations and is not primarily in the commercial interest of the requester.***

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## 8. FUNCTION (NOW STEP) 4. PROVIDE INFORMATION AND OUTREACH TO THE PUBLIC

### Environmental Justice Outreach

#### New York State Department of Health, Center for Environmental Health:

As stated in our "General Comments Attachment", we concur with the draft Policy statement that EPA should "ensure that the public understands the legal requirements for Agency action...". We feel that in minority, low-income and under served communities that special emphasis should be given to this. EPA should determine initially what the community knows about EPA. Do they know what the agency does? Do they know what the agency can and cannot do with regards to the program/project? Clarify any misconceptions and clearly state the policy/program goals and objectives emphasizing how this affects the community.

Continue to use the Internet. This means of disseminating and gathering information will continue to grow.

#### Shoshone Natural Resources Coalition:

The EPA can improve involvement opportunities for minority, low-income and the under served population through early awareness and simplified explanations. Often times the general public is unaware of the potential effects the decisions made by the EPA will have on their community. These potential effects need to be expressed when meeting notices are announced. This needs to be done through all available options including newspapers, radio, flyers etc. If more of the general public were aware of what could happen to the community, they would show a greater interest in being involved. They need to know how these decisions will affect them personally.

**Response to above two comments:** The Policy includes these suggestions in several sections. For instance, the "Provide information and outreach" section recommends that EPA information concerning a public involvement process should contain background information on the action's *"statutory basis, rationale, specific goal(s) of involvement activities, or the triggering event of the action."* That section also recommends that EPA: ***"summarize complex technical materials for the public; write information and outreach documents in plain language that the public will easily understand, and write engineering and technical documents as clearly and concisely as possible."*** In addition, the Policy's "Conduct public consultation and involvement activities" section recommends: *"Provide guidance, resources, training, and professional assistance to Agency staff and interested delegated program partners, when feasible, to assist them in conducting or participating in public consultation and involvement activities in an effective and credible manner (This includes providing the technical, scientific, and background information in a manner that allows the involved public to understand the relevant science for the issues under discussion.)"* This section also recommends that EPA describe ***"Information on the social, economic, and environmental consequences of proposed decisions and alternatives that has been prepared in connection with the proposed decision."*** EPA intends to seek to emphasize in public involvement training the need for clear and concise communications and effective outreach.

Guild Law Center and Michigan Environmental Justice Coalition:

GLC and the MEJC believe that the Draft Policy must specify that more aggressive outreach and notification efforts are needed when a proposed action or decision may adversely affect an environmental justice community. In such circumstances, we believe the EPA should consider holding a public meeting just before or just after the beginning of the comment period to ensure that these communities are aware of the proposed action, its possible effect and their right to comment on the decision. The EPA could work with churches, community centers and social service organizations to plan and publicize these meetings.

**Response:** For local or site-specific community projects, EPA agrees that enhanced outreach in environmental justice communities is appropriate. New language in the goals section of the Policy suggests that EPA should partner with local community organizations for outreach: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement."*** The Policy complements EPA's environmental justice activities. EPA intends to seek to include the comment's suggestions in EPA public involvement training materials.

## **Create Documents that are Clear and Concise**

Citizen #4:

There is one aspect of this public involvement thing that I would like to comment on, and that is the actual public notice itself (e.g., Federal Register). The notices are frequently just too lengthy - this particular notice being a case in point. I was especially frustrated by a recent Final Rule on the Risk Management Program (RMP) for the release of OCA data. That particular notice was extremely lengthy, yet still failed to communicate in any understandable way in language that anyone could understand, that the public can visit a reading room to view the RMP/OCA data, can take notes by hand, but cannot print, photocopy or download any of the data.

California Association of Resource Conservation Districts:

One does not usually know the Federal Register number and that system at best is confusing, burdensome, overly complicated and uses advanced language skills that many folks don't possess. This language must be simplified with executive summaries in plain English, at about the 6th grade level, so an average person can read and understand the issues and facts...

The essence of public involvement is to give stakeholders something that is clearly stated and readable without spending hours and hours and hours to do so. I'm sorry the rules makers have to create such complex documents.

Golden Gate University, Environmental Law and Justice Clinic:

.....in reference to the notion of making the process more accessible to public, circulating materials in "plain English" and making them available in other languages, in addition to large print and Braille would be an important step. It would also be helpful if in tandem with this approach, the documents were streamlined so as not to be redundant, or dense with non-essential information. I must admit that even in reviewing this policy that is geared towards inclusivity, it took me an enormous amount of effort to sort through.

WPI:

The plain language concern is related to the complexity of most decision making processes. They are so long and full of drafts after draft report that a person on a citizen advisory committee can be easily overwhelmed. Summarizing, paraphrasing and otherwise simplifying the reading and other procedural information would help to attract and maintain public participation.

**Response to above five comments:** EPA appreciates the comments. While the material that EPA typically includes in the public notice frequently results in lengthy notices, EPA recognizes the need for notices to be understandable. The Policy's "Provide information and outreach to the public" section recommends that EPA (new language in bold italics): *"summarize complex technical materials for the public", "Write **information and outreach** documents in plain language that the public will easily understand" and "**Write engineering and technical documents as clearly and concisely as possible.**"*

EPA plans to emphasize the need for clear and concise communications in training. EPA is working to improve public notices and provides training on writing in plain language. The Agency also has several internal guidance documents that provide detailed guidelines and examples about the use of plain language for staff.

Los Angeles County Sanitation District:

LACSD would ask that EPA consider a short introduction to rulemaking language published in the Federal Register that incorporates the essence of the voter's pamphlet: a concise summary of the issues followed by pro/con arguments from identified proponents/opponents (perhaps followed by EPA's traditional text explaining how you got where you are going).

**Response:** EPA notices already contain a summary or short introduction at the beginning of the notice and EPA agrees that such a summary is helpful. EPA, however, does not agree that pro/con arguments from identified proponents/opponents of a rulemaking should be included in the notice as this would provide some members of the public a greater voice than others. EPA is working to improve public notices and provides training on writing notices in plain English.

## Provide Guidance on Plain Language vs. Legally Defensible Language

### Wisconsin Department of Natural Resources:

The policy contains language that Agency officials should write documents in “plain language that the public will easily understand”. This is a laudable goal, but how does this affect engineering and technical documents? In many cases, less understandable but more “legally defensible” language is required by EPA staff and EPA and state agency attorneys. EPA should provide guidance on how to resolve this apparent conflict of needs.

**Response:** Legal requirements are outside the scope of the Policy. However, EPA has made some changes to the Policy to address the concern regarding engineering and technical documents. See new language in the “Provide information and outreach to the public” section: ***“Write engineering and technical documents as clearly and concisely as possible”*** See also the revised statement in the same section of the Policy: ***“Write information and outreach documents in plain language that the public will easily understand.”*** The Policy also recommends providing summaries of technical information. EPA is working to improve the use of plain English in public notices and other documents and provides training on how to write documents in plain English.

## Translate Documents to Other Languages

### Guild Law Center and Michigan Environmental Justice Coalition:

To ensure that these [technical documents] materials are truly accessible, we also suggest that the EPA commit to translating these documents upon request and publicize the availability of that service.

**Response:** EPA intends to publish proposed policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient (LEP) persons, as required by Executive Order 13166. The proposed guidance suggests a general framework that EPA-assisted and EPA-conducted programs and activities can use to provide meaningful access to LEP persons. The draft LEP guidance also discusses an individualized assessment for EPA-assisted and EPA-conducted programs that balances factors to ensure meaningful access by LEP persons to critical services and vital written materials while not imposing undue burdens. Whether or not a document (or the information it disseminates or solicits) is “vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

### St. Regis Mohawk Tribe, Environment Division:

I don't think it can be understated how important it is to write documents in plain language and when appropriate in other languages, as well.

**Response:** EPA agrees documents should be written in plain English and in other languages where appropriate. See above response. The Policy's “Provide information and outreach to the public” section recommends: ***“Consider whether EPA should provide documents in languages in addition to English in order to reach the affected public or interested parties...”*** EPA intends to emphasize the need for clear and concise communications in public involvement training for EPA staff. EPA is working to improve the use of plain English in public notices and other documents and provides training on how to write documents in plain English. EPA is also working to expand its capacity to provide translations.

## Recommendations for Outreach to Non-English Speaking Communities

### Wisconsin Department of Natural Resources:

What is the requirement or guidance of the policy regarding translation issues and outreach through nontraditional government channels such as churches and cultural organizations? Both of these are very labor-intensive, requiring personal contacts. As written, "by using other comprehensive or creative means" to consider languages spoken, local communications preferences and location, the language implies that a thorough, comprehensive effort (e.g., multi-media campaigns in languages other than English) should be made for every action or activity. Often, smaller and more targeted efforts are more effective.

**Response:** The Policy does not suggest that comprehensive communication efforts as described in the comment should be used for every action or activity. Rather, the Policy contains various suggestions for involving the public, including, in the "Provide information and outreach to the public" section: *"Consider whether EPA should provide documents in languages in addition to English in order to reach the affected public or interested parties..."* The Policy contains no requirements, but the "What Are the Purposes, Goals and Objectives of This Policy" section recommends using appropriate public involvement techniques to ***"Make every effort to tailor public involvement programs to the complexity and potential for controversy of the issue, the segments of the public affected, the time frame for decision making and the desired outcome."***

EPA intends to soon publish proposed policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient (LEP) persons, as required by Executive Order 13166. The proposed guidance suggests a general framework that EPA-assisted and EPA-conducted programs and activities can use to provide meaningful access to LEP persons. The draft LEP guidance also discusses an individualized assessment for recipients that balances factors to ensure meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofits.

### Pollution Posse:

The discussion is limited to only people who speak English. From my experience, EPA employed so many people that were very hard to understand, and many times it appeared that they hid behind the language barrier when hard questions were asked of them, but on the other hand people who were affected by pollution that spoke Spanish (for example), had no way to understand what was going on. On many occasions, I asked for an interpreter, and when a public meeting was held EPA's answer to me was.... "The Spanish speaking people didn't come, so we didn't need a interpreter," On this occasion EPA also held the meeting outside of the community, further hindering public participation. If there is a large population of any race or ethnic background, EPA should provide people who can communicate to them. A site in Missouri where there is a large population of Slavic, etc., residents, the polluting company is smart enough to have hired a man who has a Slavic name, and practices the same religion as many people living there.

### Bison Land Resource Center:

In our area, one of the greatest barriers is a language barrier, as our largest minority group is the Lakota/Dakota (Sioux). When events are held in English without translation, many members

of this group are effectively excluded. Similarly, when local reservation publications and Lakota-language radio stations are not provided full information for public involvement, these populations are excluded. For the public to truly be involved, the general public must be notified of environment-related activities in a time frame and in a manner that makes input not only possible, but likely.

**Response to above two comments:** EPA appreciates the comment. See above response. In addition, the Policy's Conduct public consultation and involvement activities also recommends, *"...consult or involve the affected public to ensure that the approaches selected consider and, if appropriate, accommodate the potentially affected parties' needs, preferences."* EPA intends to incorporate these ideas in public involvement training materials and a data base of public involvement best practices for use by EPA staff.

Unitarian Universalist Fellowship, Falmouth, Massachusetts: All of the major ethnic and cultural communities have their publications of their own that can be helpful to the Environmental Protection Agency. Cable television and radio stations can be useful in calling attention to environmental concerns. If the EPA is trying to work with Portugese-speaking people on Cape Cod or in the New Bedford, there are editors and station managers willing to be helpful. In regions where many individuals speak Spanish, or other languages, there are other journalists and community leaders to contact. Please don't overlook "minority publications." They're very important for an increasing number of Americans.

**Response:** EPA agrees that "minority publications" and news media can be helpful in reaching particular populations. EPA intends to include these ideas in training materials and incorporate them into a data base of public involvement best practices for use by EPA staff.

Environmental Defense:

These should be advertised on TV, radio and newspapers and should not be excessively technical and should be understandable to the whole public, and when necessary, should be done in various languages.

**Response:** EPA agrees that notices to the public should be understandable and not overly technical. This position is stated in the Policy. Also, see above response.

**Provide Guidance for Multi-Lingual Outreach**

American Water Works Association:

The importance that EPA places on translating information for people that do not speak English is reflected in its drinking water program requirements for Consumer Confidence Reports and Public Notification. AWWA encourages EPA to assume the same level of responsibility for informing non-English speaking people that it has recommended for drinking water utilities. For example, in its Public Notification Handbook (EPA 816-R-00-010, June 2000) EPA recommends that utilities consider a "threshold of ten percent of the population or 1,000 people whichever is less for providing multilingual information" (page 13). In addressing this issue, AWWA also recommends that EPA develop specific guidance for determining what constitutes a large proportion of non-English speaking people and the process and data to be used in such a determination.

**Response:** EPA appreciates this comment, however, the Policy is not the appropriate vehicle for such guidance. Also see above section responses.

## Recommend Regular Communication with Interested Public

### Citizens for Responsible Water Management:

Might the EPA do more to ensure that persons who have shown interest in its operations are kept fully informed?

### National Association Of Home Builders:

NAHB also recommends that EPA program officers should maintain an ongoing dialogue with industry, trade associations, and other interested groups so that no proposals issued by EPA will take any seriously interested group by surprise.

**Response to above two comments:** EPA agrees that efforts should be made to keep interested persons informed. Staffing and resource constraints affect the Agency's ability to do so, however. See new language in the "Provide information and outreach to the public." section of the Policy, under "Actions: ***To the extent possible, maintain ongoing communication and outreach with the interested and involved public on particular EPA activities through periodic newsletters, list serves or other means.***"

## Recommendations for Better Involving "General Public"

### New York State Department of Health, Center for Environmental Health:

At some EPA stakeholders meetings the "general public" is brought in to be part of the meetings. Unfortunately, many of the people are not fully briefed on the issue and cannot contribute much to the process. EPA needs to find a better way to involve the public in these issues. Possibly, conducting some sort of briefing/issue discussion prior to involving the "general public" in the stakeholder meetings would help.

**Response:** EPA agrees that the general public should be educated on the particular issues under discussion in order to effectively participate in meetings. EPA intends to include this idea in training materials and in a database of public involvement best practices for use by EPA staff.

## Long-term Outreach Needed for Contaminated Sites

### Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit, Hazardous Materials and Waste Management Division:

One area where the proposed policy seems deficient relates to sites where long-term actions are included in the remedy. ....The policy can incorporate these long-term considerations...

On page 15 of 40, the Goal 1 recommended action could specify that EPA request funds for continuing public involvement activities at sites whose remedies include long-term actions. Goal 3 on page 18 of 40 could also include funds for stakeholders to maintain involvement at these sites. Specifically, TAGs could be provided to allow stakeholders to maintain data bases and files on these sites. Goal 4 on page 20 of 40 could specify outreach for post-ROD decisions selecting and implementing long-term actions and controls, including site delisting and five-year reviews.

**Response:** This suggestion was referred to the EPA Superfund program.

## Allow Public Comment at Each Stage of Cleanup Process



Washington State Department of Ecology, Toxics Cleanup Program:

Public comment is not required during each stage of cleanup on EPA projects. This should be changed to reflect the goal of early and meaningful public participation. Comment should be held on each significant stage of cleanup (i.e., Remedial Investigation, Feasibility Study, Proposed Plan, etc.)

**Response:** EPA agrees that the public should be involved in decision-making processes as early as practicable. According to the Superfund Program, last fall it issued a memorandum focused on improving early and meaningful community involvement. This document (OSWER Directive 9230.0-39) can be found on the web at:

<http://www.epa.gov/superfund/resources/early.pdf>

Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit, Hazardous Materials and Waste Management Division:

One area where the proposed policy seems deficient relates to sites where long-term actions are included in the remedy. EPA has recently issued guidance on the use of Institutional Controls under RCRA and CERCLA. The emphasis in this document is on the need for effective long-term actions and the necessity of meaningful five-year reviews. As described in the policy, the focus of organized public involvement is on EPA decision making, and has traditionally addressed the project scoping and RI/FS phases through the ROD. The policy has the opportunity to provide some leadership about post-remedy phases of the project, where delays and fewer activities create a lower profile for the project with the public.

Current EPA decisions may include specification of long-term activities, including institutional controls. However, most often these long-term attributes are merely noted in the remedy selection and ROD, and actual definition is deferred until some future O&M Plan (or similar document), which is usually not provided to the stakeholders for public review. In fact, community involvement at the site is essentially ignored after the ROD or Remedial Design stage.

In addition, EPA is driven to remove sites from the National Priorities List once the remedy is implemented. If the remedy has long-term features, such as monitoring, maintenance, or institutional controls, the site can still be delisted regardless of the degree of risk management required at the site. This delisting could occur years after the ROD or RD, when no site-specific public involvement mechanisms are in place.

Similar flaws exist for five-year reviews, which are required for sites with remaining contamination. EPA does not create or maintain mechanisms for involving the concerned stakeholders in these latter activities.

**Response:** EPA agrees that public involvement opportunities should be available throughout the course of an EPA action, including long-term actions. According to the Superfund Program, EPA recently issued Superfund guidance (OSWER Directive 9355.7-03B-P) establishing expectations for public involvement during the five-year review process. This guidance can be found at: <http://www.epa.gov/superfund/resources/5year/index.htm>

Moreover, the Superfund program has explicit requirements for public participation during the delisting process, including a 30 day comment period, to ensure the public knows about and can express any concerns about the proposed action. Accordingly, EPA has added a new third bullet to Step 5 "Conduct public consultation and involvement activities.", section "a. Actions", which reads (new text in bold italics): "***For site-specific activities, start public involvement efforts early in the action and continue them, as appropriate, until all work is completed***".

## Support Public Involvement in Developing Significant Information Products

### American Chemistry Council:

In discussing its applicability, the draft policy fails to mention "significant information products" such as websites and reports. EPA's Office of Environmental Information has led the Agency in recognizing that information-based initiatives can, like rules and cleanup plans, have significant effects on members of the public. Their development can likewise benefit from early public involvement. The Agency's draft framework for its Information Products Bulletin (IPB) (65 FR 71314, Nov. 30, 2000) explains these points well. The final public involvement policy should explicitly mention public involvement products and reference the IPB.

**Response:** EPA agrees that the development of significant information products can benefit from early public involvement, and has added among the items listed for particular consideration of public involvement: "***The development of significant information products (as the Office of Environmental Information has defined them in Appendix 2: Definitions).***" The Office of Environmental Information developed the Information Products Bulletin (IPB) to provide the public with advance notice of EPA's and some states' products under development. It also provides information about public involvement opportunities during those products' development. The Policy refers to significant information products and references the IPB. For further information about the IPB, see <http://www.epa.gov/ipbpages/>

## Inform the Public about EPA Meetings with Stakeholders

### People for the Ethical Treatment of Animals and Earth Island Institute:

[Recommend that] The EPA provide, via its web site, public notice of meetings between agency management and staff with stakeholder organizations.

We do not believe that the development of a simple electronic "meeting calendar" on the EPA web site would result in the harms which have been suggested. Indeed, we believe that this approach is the only means of ensuring that all stakeholders are properly notified of EPA meetings that are relevant to their mandate.

### Citizen #6:

The fact that you do not want to disclose to the general public the business groups and front organizations you regularly meet with is evidence enough of whom you really serve in these decisions. ....If the attempt to obtain public input into "Draft 2000 Public Involvement Policy" is legitimate, which is dubious to many of us who have watched the scheming of big businesses aggressively pushing their agenda for so long, then there is only one way to start to clean up the corruption. If this is indeed not just another public relations ploy instigated by the well-compensated front groups of big business, then the best service you could do the American people is to publish regularly (annually or semiannually) a list of organizations that meet with the Environmental Protection Agency. An added service to the public would be to possibly include a main issue or topic under discussion with each group. ....Such a policy would require little effort, result in a huge benefit to the public at large (since we could actually track corruption for a change), and actually move your agency in the direction of its stated purpose.

Citizen #54:

I want a public involvement policy that informs the public of any connections with special interests contrary to the environment which might be influencing environmental policies (such as big business).

Citizens for Responsible Water Management:

The EPA would receive more aid from concerned citizens if it informed the public more fully of the multitude of pressures exerted on individuals in government.

**Response to above four comments:** EPA has an area of its Web site dedicated to informing the public about its public meetings. Please see <http://www.epa.gov/epahome/announce.htm> to view these listings. This site can be accessed from the EPA Newsroom site. It contains lists of upcoming public meetings, conferences, workshops, & symposia, enforcement actions, & announcements from several EPA Regional offices (near the bottom of the page). EPA welcomes suggestions on how to improve this presentation of meeting information.

EPA does not agree that public notice should be given of all meetings between agency management and staff and stakeholder organizations, or that it should adopt a general policy against meeting with individual stakeholders and groups without others present. In many cases, such meetings will be more candid and provide more information to the Agency. It is EPA's policy, however, to provide the fullest possible participation in Agency decision making, and in rulemaking to ensure that new data or information provided in meetings are placed in the rulemaking docket. One of the goals of the Policy is to "*foster a spirit of mutual trust, confidence, and openness between the Agency and the public.*" The Public Involvement Policy is meant to promote an "even playing field" for all.

### **Present New Outreach Activities in Context of Existing Efforts**

Doctoral Student, Washington State University, Department of Geography:

Outreach is another one of those tricky words. When an agency finds outreach necessary, in the minds of many citizens, it's because they aren't "there" or involved in the first place. Said another way, presenting outreach as a new thing to do, communicates it hasn't ever been done and it's the first time anyone ever stopped to think about it. Presented as ways to expand or improve current outreach strategies, and discussing/delineating the new and old strategies, may be more successful in building public trust. If it is a new thing, be honest about it, e.g., "in response to our inadequate outreach efforts of the past, we will....."

**Response:** In the Policy, EPA is not presenting outreach as a "new thing." The 1981 Policy was clear about the necessity of providing solid outreach programs (see <http://www.epa.gov/publicinvolvement/pdf/Frn2.pdf>). Though the updated 2002 Policy has an expanded outreach section, it is not because of non-performance, it is because the Agency has broadened its experience over the past twenty-two years.

### **Partner with Local Organizations for Outreach**

Guild Law Center and Michigan Environmental Justice Coalition:

The EPA could work with churches, community centers and social service organizations to plan and publicize these meetings.

ACES, Inc.:

Could EPA fashion a program to use, for example, COA (Coalition for Aging) and/or AARP groups to locate retired persons willing to work in their community on environmental problems? I think COA's are a natural for this approach since they frequently have seniors with professional talents. Many retired people are waiting to be asked for their help; COA's also are organized with a staff. The COA could be the buffer between EPA and possible seniors and handle any financial matters through a grant.

Washington State Department of Ecology, Toxics Cleanup Program:

A way to improve outreach is to assign a public involvement specialist to get to know the communities. Attend church meetings and link messages through ministers where these minorities already have trust developed. Go door-to-door in these communities with someone they already trust to give out the messages. Recruit one or two leaders from each group to attend EPA meetings and provide input from their perspective, etc. Make them part of the process.

Washington State Department of Ecology, Toxics Cleanup Program::

There is a list of ideas on how to meet with the public. What's missing is the idea of going to them. Not everyone has the time or desire to attend every meeting. Offering to take the message to already organized and planned meetings (in addition to holding the "required meeting") gives organized groups more context to hear our message and has often been more productive. Asking the community what they want is a good way to begin.

New York State Department of Health, Center for Environmental Health:

Work with church leaders and leaders of local civic groups to determine what are the best ways to disseminate information and the format of the information (both written and verbal). Schools, churches, community centers, etc. could be asked to get involved in mobilizing the community to participate in EPA activities.

Environmental Defense:

The Agency can also use local community groups—not just environmental but also other locally-based groups—to help organize and publicize public meetings; these groups can reach a larger and more diverse population than EPA often can... Finally, EPA can forge partnerships with local grassroots groups to reach different segments of the population.

**Response to above six comments:** EPA agrees that it is important to work with local community organizations. See new language added at the end of the Goals section: ***“Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement,”*** Also see in the methods portion of “Identify interested and affected public,” participating in the events of others and reaching the members of organizations through their publications. EPA will seek to include these suggestions in EPA training materials. Resource and staffing constraints will, of course, affect EPA's ability to utilize all of these suggestions.

Michigan Environmental Council:

EPA regional leadership should develop and maintain lists of consistent strategic partners who can serve as conduits for public involvement opportunities and announcements. Each list

should include state agencies, trade organizations, non-governmental organizations, corporate interests and private citizens. These groups should understand that they are partners in the effort to build public awareness of pending EPA decisions. Partners should be provided with notification of processes about to begin and basic instructional materials regarding the public participation methods for dissemination to their constituents. Particular attention should be paid to the development of partners representing and including minority and low-income populations. These cross-project associates will help generate consistent participation from under served communities and enhance the EPA's list of concerned citizens.

The Groundwater Foundation:

I would also like to suggest that along with formal frameworks for public input such committee work, and stakeholder meetings, EPA should consider partnerships with groups like the Groundwater Foundation in reaching stakeholder groups that may not be able or experienced in contacting the government directly. Some groups are hesitant about this even after a specific invitation is extended-yet these individuals and groups can prove to be very helpful. ....The Groundwater Foundation has found that local teams are in an excellent position to develop innovative solutions and address local problems with local resources. These experiences can provide a wealth of data and on-the-ground solutions to EPA as the agency seeks broad public involvement.

**Response to above two comments:** EPA agrees that it is important to work with local community organizations. See new language added at the end of the Goals section: ***“Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement,”*** Also see in the methods portion of “Identify interested and affected public,” participating in the events of others and reaching the members of organizations through their publications. EPA will seek to include these suggestions in EPA training materials.

## **Partner with Conservation Districts**

California Association of Resource Conservation Districts:

Conservation districts, some 3000 strong across the United States, are the backbone of local involvement and should be recognized by your agency and your regional offices as such. These locally led districts work with local stakeholders on various environmental issues and could be your key to successful and meaningful outreach. .... I would recommend you consider full time liaisons to agriculture, producers, and conservation districts in EVERY state or region, to validate the concept of Stewardship and Outreach that you are pursuing.

**Response:** EPA agrees that this partnership should be further explored; however, EPA does not have sufficient staff or funding to assign liaisons in every state or region. It is not EPA's primary function to provide localized information and assistance delivery, but conservation districts are very helpful collaborators in our community-based efforts.

## **Conduct Cross-Border Outreach**

Citizen #8:

It's very important that, with questions which involve issues that cross borders, connections are sought with citizens, as well as governments, across those borders. This may be best facilitated by including non-governmental organizations, especially those with members in both countries.

**Response:** EPA agrees, and routinely implements this suggestion. EPA US/Mexico Border Offices facilitate such exchanges with NGOs and work with EPA Regions 7 and 9. Regional offices also work with Caribbean organizations and governments. With Canada, EPA Regions 2, 3, 5, 8 and 10 work with the appropriate Canadian provinces and regional organizations, Canadian federal agencies and national organizations, and with the US-Canada International Joint Commission. EPA Headquarters Office of International Activities leads EPA's international efforts.

### **Clarify the Public Involvement Process for the Public**

#### Sierra Club, Committee on Environmental Justice:

The decision making process on rule-making, creating guidance, implementation or application of rules, regulations, or guidance, is frequently very difficult for various stakeholders to understand. Once they are firmly established, by statute or by agreement, agencies should provide easily-understandable "ground rules" at the outset of any public participation process informing the public as to how their input will be used, what their role in the decision making process will be, any statutory or regulatory requirements which must be satisfied by any agency action under consideration, any review process which will involve other agencies or governmental entities, and any rights of administrative appeal open to public participants.

**Response:** EPA agrees that materials should be provided at the beginning of any public participation process outlining the process that will be used. The Policy recommends such materials to be developed and disseminated. EPA will seek to include these ideas in training materials and in a data base of public involvement best practices for use by EPA staff.

#### Sierra Club, Committee on Environmental Justice:

The public needs to be informed as to the minimum criteria which must be met to conform with applicable international, federal, state, or local law or regulation so that they understand the "bottom line." In some states, state regulatory requirements may not be more stringent than federal requirements. Public participants must be informed that any recommendations which they make to the state agency to address local concerns which are more stringent than federal requirements will be dismissed out-of-hand at the state level. On the other hand, some states may offer more procedural options, for example, and that such options are available must be clear.

**Response:** EPA agrees that the public should be informed of the federal statutory and/or regulatory requirements that may constrain the action or decision. In the Policy's "Provide information and outreach to the public." section, under "a. Actions" the Policy sets out several recommendations to address these concerns. This Policy is not binding on states, and each state must make its own decision on how it believes these matters should be expressed to members of the public.

#### Sierra Club, Committee on Environmental Justice:

Agencies should not change the ground rules well into the public participation process unless the public welfare is being undermined. When the public participation process is abused, the process of developing and implementing public policy can break down.

**Response:** EPA agrees that the ground rules for public participation should be changed only in limited circumstances. EPA will seek to address this issue in EPA public involvement training.

City and County of Denver, Department of Environmental Health:

The Policy Must be More Cohesive, and Bring Together All the EPA's Public Participation Programs. Currently a hodge-podge of public participation requirements and programs exists which is confusing to both EPA staff and the public. Even sophisticated participants in EPA activities have a hard time understanding the various public participation programs, what types of participation are available under which circumstances, and whether public participation is mandated or simply discretionary in a particular instance. The average person has no chance of understanding the system. DEH staff suggest that as part of the new policy, the EPA prepare a checklist of both required and recommended public involvement activities, along with sample forms reflecting the requirements for each statute or program where differing requirements exist. This will enable all involved to know which requirements exist in a particular situation. The checklist should clearly specify the role of the general public, state governments, local governments, and tribes so EPA staff and all others involved will know what is expected and what is required.

**Response:** EPA appreciates the comment, and agrees with the goal of attempting to make public involvement requirements more cohesive. EPA will seek to improve the public's understanding of public involvement requirements through training and resources such as EPA's "Public Involvement in Environmental Permits: A Reference Guide" (<http://www.epa.gov/permits/publicguide.htm>). The document "Engaging the American People: A Review of EPA's Public Participation Policy and Regulations with Recommendations for Action" which can be found at [<http://www.epa.gov/publicinvolvement/policy.htm#engaging>] provides a listing of public participation requirements under EPA's various environmental programs. Such detail is appropriate to and may be reflected in training materials.

New York State Department of Health, Center for Environmental Health:

The draft Policy states that EPA should "ensure that the public understands the legal requirements for Agency action...". We concur with this statement. We would like EPA to strongly emphasize with communities it is working with what it can and cannot do, what EPA can commit to and EPA's goals and objectives for the project. Establishing this foundation at the beginning of a project/program is helpful for all involved parties.

California Department of Toxic Substance Control:

We believe efforts should be made to ensure the public is involved as early as possible in the process, that agency staff make every effort to explain the process, and that our regulatory authority be understood by all affected parties. This may prevent creation of an unrealistic expectation that the process will address issues outside the agency's regulatory authority, and ultimately lay the foundation for trust in our decisions.

Association of State Drinking Water Administrators:

First of all, the Agency should include a time line with its meeting announcements and feedback requests that relate to the public how the input fits into the overall agenda of the issue or policy that is up for comment (i.e., how far along are they in the decision making process? How soon before the public knows the result of their comments?)

**Response to above three comments:** EPA agrees that ground rules setting out goals and objectives, as well as legal constraints, should be established and disseminated to the public at the beginning of the public involvement process. The Policy suggests that this information should be clearly stated. EPA added the following new language to the "Plan and budget"



section of the Policy, especially the bullets such as, ***“Proposed schedule for public involvement activities that is consistent with the timing of the decision process”*** listed under section “a. Actions:”. Also see new language in section 5(c) under “Conduct public consultation and involvement activities” (shown in bold italics): ***Agency officials should clearly identify the issues for discussion, negotiation or decision prior to and during a public involvement process, so that participants understand on which issues they should comment. EPA officials should describe clearly the type of public involvement process planned, the schedule, EPA’s expectations for the outcomes of the process and the timing and type of feedback that EPA will provide. If possible, the public should be involved in determining the design of the processes.***

### Use Additional Communication Tools to Reach the Public

#### Delaware Nature Society:

The Society applauds the Agency’s recognition that the Federal Register and legal notices are not enough to alert the public of EPA actions/activities. For those members of the public that are technically aware, the EPA website will continue to provide much information. However, for those technologically challenged, efforts to inform the public beyond the website are needed and appreciated.

#### Columbia River Crab Fisherman's Association:

Federal Register is a poor way to get notice or information to the average citizen.

#### St. Regis Mohawk Tribe, Environment Division:

Certainly, utilizing creative means to get intended messages across is paramount in smaller communities where technical and electronic information may be limited or unavailable. EPA will need to make a more concerted effort in reaching out to those minority, low-income communities whose voices may not be heard in favor of more populated areas.

**Response to above three comments:** EPA agrees that information dissemination should not be limited to the Federal Register and/or the Internet. The Agency will continue to provide information through multiple sources. See new language added at the end of the Goals section: ***“Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement.”*** Also see in the methods portion of “Identify interested and affected public,” participating in the events of others and reaching the members of organizations through their publications.

#### New Hampshire Department of Environmental Services:

EPA’s Draft Policy is also commendable for containing a series of practical guidelines for its implementation. These guidelines, including those on page 82340 setting forth specific methods for effectively providing information to the public, should indeed prove helpful to EPA staff in carrying out their various outreach activities.



**Response:** EPA appreciates this comment, and agrees that providing practical guidelines should be helpful.

New York State Department of Environmental Conservation, Office of Administration:

Although we recognize (p. 82340) that seminars, print media, the Internet and other electronic media do provide notice of availability of materials and facilitate public understanding of more complex documents, we underscore the importance of “when practical, information should be provided in formats and locations that match the public’s needs.” Careful assessment of these needs should be included in EPA program planning.

**Response:** EPA agrees that the Agency should assess the public’s information needs regarding formats and accessible locations during program planning. EPA will seek to include these suggestions in public involvement training materials for EPA staff.

## **Use Local Media to Reach the Public**

Shoshone Natural Resources Coalition:

These potential effects need to be expressed when meeting notices are announced. This needs to be done through all available options including newspapers, radio, flyers etc.

Michigan Environmental Council:

Television and radio are the primary sources of information for most citizens. As such, the EPA should make use of these media for a major announcement. The Agency should consider developing cooperative arrangements with local community cable access systems to publicize public participation opportunities.

Guild Law Center and Michigan Environmental Justice Coalition:

In particular, we commend the EPA for recognizing that public notices must be distributed through a wide variety of sources, including non-traditional venues such as community and religious publications; radio, television and cable outlets; and the Internet. Wide dissemination of public notices through sources that community members already rely on for community news is crucial to ensuring that public participation is adequate.

Environmental Defense:

EPA’s public meetings and comment periods can also be publicized more widely. Few people read the Federal Register, and email and web postings may not reach the population most affected by EPA’s decisions (such as inner-city or low-income populations). EPA can engage a wider segment of the public by placing ads and notices in newspapers and on TV and radio.

Environmental Defense:

EPA should also revise its advertising strategies when planning public meetings and comment periods. These should be advertised on TV, radio and newspapers and should not be excessively technical and should be understandable to the whole public, and when necessary, should be done in various languages.

Citizen #5:

EPA should post public notices in a LOCAL paper. Often posting in just statewide papers does not get to local populations that are truly affected.

Citizen #9:

This seems like a good program but the public will be still unaware unless you let it be known on, say, public television.

Unitarian Universalist Fellowship, Falmouth, Massachusetts:

In order to inform the public about public hearings, try to use the avenues for communication that are important to community people. Religious leaders, such as myself, can assist in notifying the public about important meetings.

**Response to above eight comments:** EPA agrees that media sources should be used to disseminate information to the public. EPA has expanded the language in the "Provide information and outreach" section "b. Methods:" of the Policy to include this suggestion (see new language in bold italics): ***"Public service announcements, articles and news releases through local newspapers, radio, and other media sources that reach the interested and affected public."*** EPA does send notices to media, particularly local media, when dealing with local issues. However, the Agency generally cannot buy media space and/or time for national issues.

Local partners can assist in raising awareness by helping the media understand the issues and the importance of getting information to their communities. See new language added at the end of the Goals section: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement."*** Also see in the methods portion of "Identify interested and affected public," participating in the events of others and reaching the members of organizations through their publications. EPA will seek to include a discussion of expanded methods for public notice and outreach in public involvement training for EPA staff.

## **Recommendations for Other Specific Communication Methods in Communities**

New York State Department of Health, Center for Environmental Health:

Use phone surveys to reach people who will not come to meetings.

**Response:** EPA appreciates the comment. The Policy's "Provide Information and Outreach to the public," section "b. Methods:" recommends using *"questionnaires, surveys, and interviews"* as communication tools. Such surveys are subject to the Paperwork Reduction Act.

National Farm\*A\*Syst:

The Outreach methods section might be revised to specifically identify support for organization of peer to peer education and outreach activities, and/or community dialogues and study circles. This could fall under 5) Educational publications, programs or activities; but people tend to think of education using the "vessel" metaphor where the educator "fills up" the student, rather than using the reciprocity model where we're all teachers and all students.

Outreach "materials" could include direct dialogue, focus groups, study circles etc. I see that these kinds of activities are included under 5. Conduct public consultation and involvement activities. However, a focus group for public consultation is a different beast from a peer-to-peer

education program where, for example, local youths are trained to take action-oriented material door to door in their neighborhoods. Or where neighborhood "eco-teams" gather to educate each other on "green lifestyle" issues. These and other strategies may be much more effective ways of providing information and outreach to the public than printing brochures or even holding public forums.

**Response:** EPA appreciates the comment. The Policy's "Provide Information and Outreach to the public.", section "b. Methods:" states (new language in bold italics): "***Participation in conferences, workshops, meetings, community dialogues or local study groups.***"

#### Environmental Defense:

To improve its outreach activities, the Agency needs to work on the ground with stakeholders. EPA can use facilitators who are sensitive to the local needs and concerns and train employees to effectively communicate with stakeholders.

**Response:** EPA appreciates the comment. The Policy includes these ideas in the "Conduct public consultation and involvement activities.", section "a. Actions: ***Provide guidance, resources, training, and professional assistance to Agency staff and interested delegated program partners, when feasible, to assist them in conducting or participating in public consultation and involvement activities in an effective and credible manner. This includes providing the technical, scientific, and background information in a manner that allows the involved public to understand the relevant science for the issues under discussion***" and "***Consider the appropriate use of third parties (neutral facilitators or mediators) in the development and implementation of programs, projects and activities***".

A third party or neutral party can act as a facilitator providing professional assistance for the process.

#### Citizens for Responsible Water Management:

The EPA has a broad range of documents in wide circulation relating to every aspect of its operations. While these constitute earnest effort to involve the public, I've noted that concerned citizens are often at a loss to find clearly-briefly-colorfully illustrated information helping them to comment on particular items. Has the EPA done all it can to insert information into schools, libraries, government offices, newspapers, and waiting rooms of hospitals - clinics - churches - dental offices when matters of unusual importance are involved? Has it worked with fast-food chains to install bulletin boards that can be regularly updated?

**Response:** EPA appreciates the comment. In some cases in which an activity affects a specific geographic area or population, EPA attempts to make information accessible in places such as those mentioned in the comment. The Agency has also worked with several fast food chains to provide information. If resources were available to do so, EPA could create and maintain bulletin boards in places where EPA staff are stationed or where EPA works with local partners to help with the task. EPA will seek to include these suggestions in EPA public involvement training.

#### National Association Of Home Builders:

NAHB identified a number of additional methods of outreach that could be used by EPA to inform our membership of new and ongoing activities. These included the publication of notices in local

and regional newspapers, additional public forums, expanding the number of sites for locating public documents, and better contact lists.

**Response:** EPA appreciates the comment. These suggestions are included in the Policy's sections on "Provide information and outreach to the public" and "Identify the interested and affected public."

### **Require that EPA Effectively Notify the Public**

#### Sierra Club, Committee on Environmental Justice:

..... the Club applauds the Policy for stating the obvious: "agency officials should not assume that the general public reads printed legal notices of Federal Register notices which are often required by statute or regulation." Yet the Policy, in the very next sentence, makes additional notification efforts merely optional. The Policy should require that the standard for notice be such that it would be reasonably likely that a person with an interest in the proposed action have actual notice of the public participation opportunity. If such notice requires more extensive media efforts, or if it requires more one-on-one outreach, the agencies need to be prepared to do what is required.

#### Guild Law Center and Michigan Environmental Justice Coalition:

The Draft Policy also focuses on notification methods in this section [consultation section]. Again, we applaud the EPA's recognition that bare legal notice is often not effective in actually providing notice to the affected community. However, we believe that the Draft Policy should take a stronger stance on this issue. Specifically, we suggest that the Draft Policy presume that bare legal notice is insufficient and mandate that agency officials use other, less formal notification methods (such as publication in community newspapers, church or social service organization newsletters; radio announcements or cable/television ads). Agency officials should be required to justify any decision to provide notice only through the Federal Register and/or printed legal notices.

**Response to above two comments:** EPA agrees that it is desirable to provide more extensive outreach than is mandated by regulation. The Policy is not a rule and, therefore, cannot impose binding requirements that EPA staff must follow. Furthermore, public involvement needs are so varied that EPA does not believe it would be appropriate to mandate a specific approach. The Policy does contain guidance for effective public involvement in EPA decision-making processes. In particular, the Policy's "Provide information and outreach to the public" section provides a long list of recommended mechanisms to ensure that people with an interest in the proposed action receive notice.

### **Public Notice and Requests for Comment must be Placed in Federal Register**

#### Color Pigments Manufacturers Association, Inc.:

In particular, the CPMA is concerned about the EPA's use of the Internet and informal guidance documents instead of appropriate rulemaking procedures. The 1981 public participation policy, which would be replaced by the Draft Policy, may require updating to reflect current rulemaking

procedures, changes in statutes, executive orders and communication technology. However, the fundamental manner in which EPA goes about its rulemaking activities, as described in the Administrative Procedures Act, and relevant regulations, should not change. Whatever manner EPA may choose to communicate with the public now and in the future, notice and substantive information sufficient to allow the public to respond must be provided in the Federal Register... While it is important for the EPA to know, at a minimum, who the interested parties are and how best to provide them notice, 64 Fed. Reg. 82339, notice of EPA activities and rulemaking should be provided in the Federal Register. We agree with EPA's use of contact lists for notification of interested parties. Such activities cannot, however, replace appropriate notice in the Federal Register. If EPA seeks comment on a document or report, whenever possible that document should be reproduced in the Federal Register. In the event that a subject document is not published in the Federal Register, that document should be carefully and completely summarized in the Federal Register to enable readers to provide comment on the proposal. There must be one central publication which the interested public can monitor in order to follow EPA activities, rulemaking, policy and guidance. That central publication is the Federal Register...

We are not in favor of EPA using the Internet instead of appropriate notice in the Federal Register. Likewise, the use of "electronic communications such as web pages, chat rooms, on-line dialogues and list servers" 65 Fed. Reg. 82340 as an alternative to the Federal Register, are not appropriate vehicles for notice to the public or primary methods of communicating with the notified or interested public...

There is an important need to preserve the process of publication, comment, review of comments, and finalization, all conducted in a deliberative and formal public manner. This testing in the crucible of public scrutiny should be augmented by other means, but certainly not replaced.

**Response:** EPA appreciates the comment. This Public Involvement Policy is not intended to and does not change the APA notice and comment publication requirements or the Agency's practice of publishing notices of the availability of important documents in the Federal Register. EPA agrees that the Federal Register should be used in conjunction with additional communication methods in order to reach the public.

## **Use Advanced Notice of Proposed Rulemaking Process to Achieve Early Involvement**

### Color Pigments Manufacturers Association, Inc.:

Many of these goals [in the draft Public Involvement Policy] can be achieved by EPA making much more frequent use of the Advance Notice of Proposed Rulemaking ("ANPR") process. The ANPR seeks preliminary comment on issues and options before a new rule is proposed in the Federal Register...

The ANPR process provides the public, and particularly stakeholders, with an opportunity to provide comment on proposals and options before the EPA invests a vast amount of time and valuable administrative resources on a particular approach or option in a formal proposed rule. Invariably, when the ANPR process is not used, the EPA is compelled to defend "substantiated" proposed rules in the comment period which follows the publication of a proposed rule. This lack of flexibility created by investing excessive resources in one particular option before the public and knowledgeable stakeholders have had an opportunity to comment often produces unworkable final rules.

The final rules produced without early public comment in a fair and open ANPR process often fail to consider the costs of the rule adequately and fail to compare those costs to the benefits anticipated from the rule. Final rules prepared without early public comment are far more likely to create unnecessary or redundant administrative and paperwork requirements. Finally, final rules of this type are far more likely to result in expensive litigation and ultimately require revision. Certainly, using ANPR procedures would comply in almost every case with EPA's recommended action to "provide program and technical information to the affected public and interested parties at the earliest practicable times to enable those potentially affected...to make informed and constructive contributions". 65 Fed. Reg. 82340.

**Response:** This comment is outside of the scope of the Policy and was shared with the EPA Office of Regulatory Management.

### **Disagree with RCRA Radio Spot Requirement**

#### Minnesota Pollution Control Agency:

The MPCA has found that the single spot radio ad announcement required under Part 124 for RCRA Permit Notices is not a practical use of public participation resources.

**Response:** EPA appreciates the comment. The Policy, however, cannot alter the minimum requirements as set out in the RCRA regulations. Section 124.31(d) of the RCRA regulations requires the applicant to provide three different kinds of public notice regarding the pre-application meeting. One of these must be a broadcast media notice. It is up to the applicant to decide whether radio or TV is the best way to fulfill this requirement. EPA expects that the prospective applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice.

### **SUPPORT ONLINE INFORMATION**

#### **Improve Internet/Electronic Communication Technical Problems**

#### New York State Department of Health, Center for Environmental Health:

Ensure that the visually impaired and others with handicaps can use the Internet pages.

Specifically make sure:

- pages do not "hang-up" any "screen reader" (programs that convert text to speech);
- pictures are identified in the background by descriptive text and not just code; and
- the page and web site can be navigated entirely by text, entirely by graphics, or through a combination.

**Response:** This comment is outside of the scope of the Policy. However, it should be noted that EPA is working to ensure that all web pages and electronic information technology (EIT) designed, procured, used, and maintained after June 21, 2001 comply with the 1998 amendment (Section 508) of the Rehabilitation Act of 1973. This comment was referred to EPA's Office of Environmental Information.

#### Minnesota Pollution Control Agency:

The Policy should direct EPA to make electronic documents available in multiple or more-universally-readable formats (i.e., ASCII, Rich Text, HTML or PDF); to use conventional filename protocols and extensions (e.g., filename.rtf, pdf, txt, or htm), and to provide the version of the format used (e.g., Word 2000, WordPerfect 6.0) in order to improve usability. EPA needs to

consider the technical capability of its target audience. EPA commonly posts or distributes electronic documents to wide audiences using a single format. This poses communication barriers to many in the target audience. Even when possible to convert a file, the steps involved are multiplied by numerous users and can hamper communication. Busy readers may skip or delay reading a time-sensitive message rather than leaping the hurdles or seeking needed help. Improving communication is consistent with the federal GPRA goals. Individual conversion hurdles may appear small, but the issue is significant when taken in aggregate across all users. EPA needs to consider the varied technical abilities and support available to its target audience.

Florida Department of Environmental Protection, Division of Water Resource Management:

We recommend that documents distributed to the public in an electronic format be in a format that can be opened by everyone. At a minimum that should include a PDF option and, if possible, also a WORD and WordPerfect version. Although many now have Internet access, not everyone may be familiar with how to open different formats. It would be constructive to include text on how to copy PDF documents into Word or WP (or provide guidance towards the instructions on the ADOBE web site).

U.S. Army Center for Health Promotion & Preventive Medicine:

Communications Technology: Beware of specialized fonts in public release materials and on web pages. Some computers will not recognize them, causing confusion and preventing the intended communication.

**Response to above three comments:** These comments are outside of the scope of the Policy. However the Agency appreciates them and is committed to improving public access through the use of multiple formats. EPA currently provides its documents in both HTML and PDF formats. HTML is the universal language of the Web and PDF is readily available through Adobe Acrobat reader, which is free to all. An Agency-wide workgroup is currently working on how to improve access to PDF documents. Agency guidance discourages the use of proprietary formats, such as MS Word and WordPerfect, because many users do not have access to the necessary software for these. These comments were provided to those offices the Office of Environmental Information and the Office of Public Affairs. These offices are responsible for web standards, internal communication, product review guidelines, and internal information product development guidance.

Center for Public Environmental Oversight:

The increasing use of the World Wide Web to disseminate information should be specifically addressed. Though the Web is an important communications tool, the use of which should be expanded, EPA should not use the Web to shift printing costs to readers. More important, EPA web sites should be tested so that people who use modems, as opposed to high-speed Internet connections, or who use software and hardware that is not the most recent version, should still have reasonable access to information. Extraneous graphics that slow downloading should be avoided. Web sites should not demand the installation of new browser software, some of which demands new hardware.

Bison Land Resource Center:

Another major problem in the last several years has been the move toward printing fewer copies of Draft Environmental Impact Statements. This seems like a great idea from an environmental angle, and at first I avidly ordered my CD-ROMs for NEPA documents. The problem is that

CD-ROMs are not useful for those who want to do more than take a leisurely stroll through a few pages of Executive Summary. One cannot compare maps and the pages describing them, look at the main text and supporting appendices, or cross-check information from section to section without essentially printing out their own copy from the disk – which is unrealistic and, in some cases, impossible.

Some CD-ROMs, such as the one for the Dakota, Minnesota, and Eastern Railroad (DM&E) project, are so slow as to be unusable. Electronic access may be present for those with computers, but in this case it was also so slow as to be unusable to members of the public. Only those whose sole life focus was reading the DEIS were able to access larger portions of the document electronically. What's worse, when people discovered that their CD-ROMs were unusable and websites for the documents were useless, they were not able to get a paper copy of the DEIS. The Surface Transportation Board would not send a second DEIS in any form to someone who had already received one. This makes sense in terms of conserving agency resources and tax dollars in most situations. But in a case where public involvement is the law of the land, it does not make sense, after all.

**Response to above two comments:** This comment is outside of the scope of the Policy. It was shared with the EPA Office of Environmental Information, which manages EPA's Web site and develops internal Web and information product development guidance.

### **Improve Content of EPA Internet Material**

#### ACES, Inc.:

ACES has used the Internet extensively in our search for environmental information appropriate for the problems we face; our advantage is that we have seniors with computer backgrounds. However, many citizen groups lack these abilities often even if they access the Internet, the plethora of information becomes overwhelming. These citizens need help. ACES is currently proposing one solution to this problem with MADEP; the attached letter and proposal will best explain our approach. Perhaps EPA could borrow this concept since your web page has a tremendous amount of valuable information. Even experienced web browser like ACES has available find it difficult to locate specific information, or just understand the extent of EPA's web page content.

**Response:** This comment is outside of the scope of the Policy. It was shared with the EPA Office of Environmental Information and the Office of Public Affairs. EPA is working to improve content coordination and search capabilities of its web site, including reorganizing it along topical lines to make it easier for users to find material quickly. In addition, EPA continues to improve the user-friendliness of its Web site by conducting Web site usability testing.

#### ACES, Inc.:

[proposal originally submitted to Massachusetts Department of Environmental Protection, to be considered by EPA as well]: The DEP web page already provides excellent resources of help; your Site Map page provides numerous choices of factual material in a number of areas. However, for the concerned first-time citizen user there is minimum guidance on the path to take for help with their problem.

[recommend that web page easily show citizens how to find information]:

A new subheading on the Site Map entitled something like "Citizen and Community Aids"



This subsection might contain a series of case studies of what citizens can and should do when a local environmental problem arises.

These local activities would involve educating citizens on potential causes of the problem, and adverse public health effects.

In addition, learn about potential legislative aids available to citizens.

Techniques for finding and using the above information would be described in the new subsection of the web page; actual case studies could be a prime source of help. In addition, some descriptive material would provide the web page links to lead one from the type of environmental problem to associated resources.

**Response:** This comment is outside of the scope of the Policy. These comments were shared with EPA's Office of Environmental Information. However, it should be noted that EPA's home page has a section called "Where You Live." From that heading the user goes to a page where, by entering a zip code, numerous data bases are accessible that provide information and maps specific to that zip code. In addition, on that web page the user can access key issues for "Concerned Citizen Resources." Case studies and citizen aids are not provided centrally on the web page. However, EPA's home page has a section called "Laws and Regulations" which provides useful information.

#### Environmental Defense:

One of the best ways to provide a wide array of information to the public is through the Internet. It is absolutely important that EPA follow up on the Draft Policy's goal to "fully implement the goals of the Agency's Public Access Strategy...(to provide the public with integrated, online, user-friendly access to environmental data and information)...." Much of the currently available data has many gaps, is poorly integrated, and does not tell a complete "story" about the environmental conditions...

#### Environmental Defense:

High up on EPA's list should be integrating and consolidating EPA's databases so it is easier for both the public and EPA employees to use the data. For example, the different EPA databases currently all use their own number systems for facilities, making it virtually impossible and labor-intensive to understand a facility's total environmental impact or to compare among facilities in the same industry. An upfront facility ID is needed to ensure consistent, higher-quality data submittals the first time. In addition, there needs to be a multi-media approach to information collection: facilities and people affect the air, water and land, and information should be collected and presented to reflect this. Integrating information in this way reduces the burden on both the public and EPA employees in obtaining and using environmental information.

**Response to above two comments:** These comments are outside of the scope of the Policy. EPA notes that it is working to improve data and information available on its web site. These comments were shared with the EPA Office of Environmental Information (OEI), which leads the development of EPA's Target Enterprise Architecture, the Agency's core applications architecture framework, and the System of Access, which are intended to, upon completion, provide access to all of the Agency's fully integrated electronic information resources.

OEI also leads the development of data standards that help to improve users' ability to integrate data for their own use. Specifically, OEI maintains several electronic application systems to accomplish this. One is the EPA Facility Registry System (FRS), a centrally managed database

of comprehensive information on facilities subject to environmental regulations or of particular environmental interest. Another is Envirofacts, which provides the public access to this information. When fully implemented, Central Data Exchange (CDX) registrations will also be used to validate high quality, accurate, and authoritative facility identification records. The quality of these records is intended to be assured through rigorous verification and management procedures.

Environmental Defense:

The Internet can also serve as a useful tool to get feedback from the public on various issues. EPA can use this to get feedback on its website's user-friendliness and data availability. The current site is much improved from the old one, but EPA needs to keep up with the rising expectations of users.

**Response:** This comment is outside of the scope of the Policy. However, EPA has numerous optional surveys on its web site to collect user feedback. Further, EPA received approval from the Office of Management and Budget for a "generic" web survey which any office or region can use, so the public can expect to see more requests for user feedback. In addition, EPA continues to improve its web site by conducting site usability testing and focus groups. EPA has also created an online EPA Dockets (EDOCKET) system to further encourage and enable public involvement in a variety of EPA actions. For more information about E-docket, please visit [http://cascade.epa.gov/RightSite/dk\\_public\\_home.htm](http://cascade.epa.gov/RightSite/dk_public_home.htm)

Pennsylvania Department of Environmental Protection, Policy Office:

Publicizing proposals in the Federal Register is a good way to distribute information, but the average person may not read the Federal Register or know how to sort through the abundance of information. DEP developed an electronic Public Participation Center on our website which provides access to every DEP proposal open for comment. From this website, documents can be printed and comments can be submitted electronically on any proposal. There are links on the website where the public can learn about DEP public meetings, plans for future regulations, the status of current regulations, and read the Pennsylvania Bulletin and codified regulations. We invite you to visit the Center at [http://www.dep.state.pa.us/dep/subject/pub\\_par\\_cen.html](http://www.dep.state.pa.us/dep/subject/pub_par_cen.html). DEP believes the public should be able to rely on a central location on the EPA website where one can easily find all regulations and policies that are open for comment.

California Association of Resource Conservation Districts:

However, the largest major drawback to public participation: the EPA web page and information on it. It simply does not disseminate, in a usable form, forms, facts or links that enable one to comment easily. If you truly seek public input, you must put active, hot links on the EPA home page that indicates where people can click to comment on topics such as Arsenic, AFO/CAFO, etc...this should include email addresses, snail mail addresses, etc. It would say something like "Comments on Proposed Regulations" and link to pages that have TITLES on various topics as mentioned above. Certainly such links should also clearly state the cut off dates for comments. The system used now, to refer one to the Federal Register, is dinosauric and appears as an obvious ploy to keep the average person from finding the information needed in order to form a comment.

**Response to above two comments:** This comment is outside of the scope of the Policy. It was shared with EPA's Office of Regulatory Management, EPA's Office of Environmental Information, and with EPA's Office of Public Affairs .

Minnesota Pollution Control Agency:

EPA should consider broadcasting public service announcements and notices via a single, well-formatted Web page menu.

**Response:** This comment is outside of the scope of the Policy. It was shared with the Office of Environmental Information and the Office of Public Affairs .

### **Support Electronic Access to EPA Information by Local Governments**

Local Government Advisory Committee:

LGAC supports the ongoing development of the Local Government Environmental Assistance Network (LGEAN). Enhanced utilization of LGEAN and similar information sites represents an opportunity to make EPA more accessible. Moreover, further development of other interactive technology could provide additional and productive access for local government to EPA's policymaking and program development efforts.

**Response:** This comment is outside of the scope of the Policy. However, it should be noted that EPA agrees that LGEAN is a helpful resource for local governments, and shared this comment with EPA's Office of Congressional and Intergovernmental Relations.

### **Recommend Increased Use of Electronic Communication**

New York State Department of Health, Center for Environmental Health:

Continue to use the Internet. This means of disseminating and gathering information will continue to grow.

Environmental Council of the States:

The Internet and increased availability of computers has also made it easier for many individuals to provide input through that avenue rather than attendance at meetings; both US EPA and the states need to expand use of this means of communication.

**Response to above two comments:** EPA agrees that the Internet should continue to be a useful tool, and the Agency plans to expand its use.

Citizen #7:

Are there Internet or e-mail based methods of gathering public comment?

**Response:** There are Internet and e-mail based methods for gathering public comment, and EPA is working to use them more broadly.

Doctoral Student, University of Washington Geography Department:

I am also disappointed by the failure of the policy to mention or explore opportunities for collecting information and feedback from the public that makes use of Internet technology. While I certainly appreciate being able to provide these comments on email, there are many additional Internet-based approaches that could be used to interact with the public, such as list-serves, Internet surveys, etc. I would like to see some recommendations about these types of feedback tools included in the final policy.

I would never argue that Internet interactions should be the ONLY form of communication with the public-- too many people still do not have access to computers. However, the country is

becoming more and more computer savvy every day. Mechanisms of interacting with the public through the Internet allow a wider range of individuals to access and interact with information when it is convenient for them than do some of the more traditional mechanisms of public involvement - such as a formal meeting. Internet technology provides a different flavor of public involvement that should be more fully explored.

**Response:** EPA agrees that the Agency should expand its use of the Internet and added new language in the section on "Conduct public consultation and involvement activities" section "b. Methods:," list common examples of information exchange including "internet-based dialogues" and in "Provide information and outreach to the public" section "b. Methods:" cites "**Electronic communications such as Web pages, chat rooms, on-line dialogues, and list serves...**" as effective mechanisms to gain information. Also, the Agency now has EDOCKET ((electronic docket) and has numerous optional surveys on its web pages to collect user feedback. Further, EPA has approval from the Office of Management and Budget for a "generic" web survey which any office or region can use, so the public can expect to see more requests for user feedback. In July 2001 EPA sponsored a two-week Internet-based Dialogue that generated a multitude of ideas for implementing the Policy. Results are at <http://www.network-democracy.org/epa-pip>.

#### California Department of Toxic Substance Control:

We also fully support the concept that the policy should be more reflective of the shift toward e-government, with the emphasis on re-examining outreach efforts that do not reflect the improvements in communications technology. Also, the policy should proactively encourage efforts to provide electronic communication with communities that in the past may have been disempowered due to a lack of technology.

**Response:** EPA agrees that the Policy should promote e-government tools, and that EPA should work with local organizations to encourage electronic access for disempowered communities. The Policy includes these suggestions in the "Provide information and outreach" and "Consider providing technical or financial assistance" sections. EPA will also seek to include these suggestions in public involvement training for EPA staff.

### **Create Electronic Notification Systems**

#### Michigan Environmental Council

The EPA website should offer an opportunity for citizens to register to receive notification of hearings, meetings and decisions, either electronically or by mail. Registrations should include an option to specifically identify a project, generically identify a policy area, or identify a geographic region. MEC acknowledges the associated expense of direct mail communications of this nature, but believes that the current fees should be waived for community based organizations or individuals who can demonstrate a financial hardship. Electronic communications can be automated to the point that no fee should be warranted.

**Response:** EPA appreciates the comment. EPA has a list of newsletters and listservs and other resources accessible from the EPA home page by clicking on "Information Resources." Instructions for signing up as well as descriptions of the listservs are available by clicking on "Listservs;" however, EPA does not have a central sign up system for "generic," project specific, or geographic registrations. There are no fees for electronic information. This comment was shared with the EPA Office of Environmental Information, which developed EPA's Public Access Strategy and with EPA's Office of Public Affairs .

Reichold, Inc.:

When new policies are developed requiring public involvement, the EPA can e-mail us and numerous other stakeholders with the EPA URL address where the policy can be reviewed and commented on. The Internet, as it ever grows, should enable the EPA to reach the broad range of US citizens as targeted in the policy. The Internet is also a paperless option to comply with the reduction in paperwork series of laws.

**Response:** EPA agrees that the Internet will enable the Agency to reach a broad range of citizens. Many EPA programs compile e-mail contact lists that they use to provide information to the interested public. See also new language in the section on "Conduct public consultation and involvement activities" in section "b Methods:" (new language in bold italics0: ***"Interactive methods that provide participants with opportunities to discuss the issues and their input with the Agency through public meetings, listening sessions, workshops, availability sessions, open houses, interviews, focus groups or surveys, Internet-based dialogues and other methods (Note: Some of these types of exchange activities, including surveys and Internet dialogues, potentially are subject to provisions of the Paperwork Reduction Act and security and privacy constraints)"***.

Local Government Advisory Committee:

LGAC supports enhanced utilization by EPA of listservers to enhance timely input from local government officials. EPA should develop procedures to utilize list servers at the earliest stages of program and policy development.

**Response:** See above response. This comment was shared with the EPA Office of Environmental Information, EPA's Office of Public Affairs and with the Office of Congressional and Intergovernmental Relations.

Environmental Defense:

First of all, EPA should improve the management of its listserves so the Agency's feedback notices better reflect the interests of the listserves and its members.

**Response:** This comment is outside of the scope of the Policy. It was shared with EPA's offices that are working on public access issues.

National Association Of Home Builders:

We now add to that list the prospect of more effective Internet-based contact lists where members of the public could sign up to be contacted on various issues and be able to amend the contact information to keep it accurate and up to date. These improved databases would ensure better notice and the opportunity to participate in EPA regulatory activities.

**Response:** EPA appreciates the comment. EPA has considered the use of such a database, however, it has not been implemented because issues of security and the requirements of the Privacy Act constrain such efforts.

New York State Department of Health, Center for Environmental Health:

Ensure that public announcements are available on the Internet as well as distributed by the press. If you are working with a community that has hearing or visually-impaired people, develop an e-mail mailing list, and include additional assistance, if necessary, for those who may not easily understand announcement content.

**Response:** EPA agrees that the Agency should post public announcements on the EPA web page and send them to the media. EPA also agrees that the Agency should attempt to ensure that the interested and affected public have access to and understand the information, subject to EPA's budgetary constraints.

### Create Electronic Docket for Documents

#### Environmental Defense:

EPA should also improve its Internet docket. For example, the Department of Transportation's Dockets are all available via a search engine. Instead, EPA's dockets are not all available online and require people to either travel to Washington, DC or to request for them to be mailed to them. Having the documents available online can save EPA and the public time and resources.

**Response:** In April, 2002, EPA launched the EPA Docket System (EDOCKET). This is an on-line regulatory and non-regulatory tracking system that allows users to search for docket information, as well as allowing on-line public comment. For more information about EDOCKET please visit [http://cascade.epa.gov/RightSite/dk\\_public\\_home.htm](http://cascade.epa.gov/RightSite/dk_public_home.htm)

#### Iowa Department of Natural Resources, Water Supply Section:

Any government document referred to in a rule should be available on the Internet for easy access.

**Response:** EPA agrees that important background documents should be available on EPA's web page, and has added new language in the "Provide information and outreach" section of the Policy (new language in bold italics): "*Publications, fact sheets, technical summaries, bibliographies, resource guides, **relevant supporting documents** and other printed **and electronic** materials which may be made available through the mail, **on the EPA web site** and at information depositories...*"

#### Pennsylvania Department of Environmental Protection, Policy Office:

DEP suggests that EPA emphasize electronic access to documents and decisions as the preferred method for publicizing information and accepting comment. DEP encourages EPA to update the policy to emphasize and centralize electronic access to all proposals open for comment.

**Response:** EPA agrees that the Agency should increase electronic access to documents and decisions. However, the suggestion to centralize electronic access to proposals is outside the scope of the Policy. This comment was referred to the Office of Environmental Information. The new EPA Docket System (EDOCKET), launched by EPA in April, 2002, allows the public to view and comment on environmental policy development, as well as other key Agency decision-making processes.

#### TRI-TAC:

The Draft Policy specifically refers to "Depositories or dockets" as central collections of documents, reports, studies, plans, etc. It also states that these should be located in places that are convenient to the public and suggests using "electronic depositories that take advantage of the Internet to reach directly into homes, libraries, and other facilities throughout a community and across the nation." Tri-TAC strongly endorses this approach, and also encourages EPA to post publicly submitted comments along with other relevant documents. Although not all

documents are submitted to EPA in electronic format, those that are should be placed on the Internet for easier access. EPA may want to encourage interested parties to submit comments in acceptable electronic formats for wider accessibility.

**Response:** EPA agrees that the Agency should enhance electronic access to information, and is making more of its documents available on the Web and including URLs in its public notices. This comment was shared with the EPA Office of Environmental Information, EPA's Office of Public Affairs and with the Office of Regulatory Management. The Office of Environmental Information (OEI), in partnership with various EPA Programs, has launched a new electronic docket system (EPA Dockets - EDOCKET). EDOCKET allows public participation through two methods: tracking of regulatory development, and the opportunity to submit comments directly to EPA via the web. EDOCKET will hold all public comments, whether submitted by email or regular mail, and makes them available on-line. **For more information about EDOCKET please visit [http://cascade.epa.gov/RightSite/dk\\_public\\_home.htm](http://cascade.epa.gov/RightSite/dk_public_home.htm)**

Guild Law Center and Michigan Environmental Justice Coalition:

The Draft Policy envisions making these [technical] documents available at central repositories or through the mail. However, given the wide availability of Internet access, the GLC and the MEJC recommend that the EPA set a default policy that all documents available at "information depositories" or through the mail should also be made available on-line; EPA officials should be required to justify any decision not to create an electronic document repository.

**Response:** EPA agrees that the Agency should make greater use of electronic depositories. The Policy's section on "Provide information and outreach to the public" recommends that ***"Agency officials are encouraged to determine the accessibility to the interested public and feasibility of electronic repositories that take advantage of the Internet to reach directly into homes, libraries and other facilities throughout a community and across the nation."*** This comment was shared with the Office of Environmental Information, which develops internal Agency Web and information product guidance. This comment was shared with the Office of Environmental Information, which developed EPA's Public Access Strategy. Electronic access is necessary and is quickly becoming the way EPA does business. However, EPA does not have the resources to locate all past publications and make them available on the Web.

California Association of Resource Conservation Districts:

I must commend you, however, for having the proposed policy available on the web. All proposed policies should be published on the web; today the average person has no true access to libraries, water districts or city hall, at least in California. We are computer literate out here believe electronic communication is vital to adequate outreach efforts.

**Response:** EPA agrees that the Agency should post proposed policies that are open for public comment on the EPA web page. The Policy recommends using a variety of methods to ensure that the interested public has access to information, including both electronic and traditional methods to accommodate those without access to the Internet.

**Address Digital Divide Limitations**

National Environmental Justice Advisory Committee, Enforcement Subcommittee: There is a danger of creating an over dependence on technology to reach the public -- for example, depending on the web site as a means of getting out information about opportunities for public participation. Most communities that I work with do not own computers or have access to a library with such resources, placing them at a disadvantage when it comes to information gathering and utilizing databases such as the TRI. Keep this in mind when putting a substantial amount of resources into web site and links [and the document notes the reality of the "digital divide"].

Sierra Club, Committee on Environmental Justice:

...the Sierra Club recognizes the power and convenience and possibilities for participation presented by the Internet, but we believe that until the issue of the "digital divide" relating to Internet access in poor communities is resolved, the Internet cannot substitute for more rigorous and traditional forms of outreach and participation.

Delaware Nature Society:

The Society applauds the Agency's recognition that the Federal Register and legal notices are not enough to alert the public of EPA actions/activities. For those members of the public that are technically aware, the EPA website will continue to provide much information. However, for those technologically challenged, efforts to inform the public beyond the website are needed and appreciated.

**Response to above three comments:** EPA agrees that it should make information available to people who do not have electronic access. The Policy recommends using a variety of methods to ensure that the interested public has access to information, including both electronic and traditional methods to accommodate those without access to the Internet.

Wisconsin Department of Natural Resources:

...posting documents on the web can save substantial printing and copying costs, however, only 50% of the population has access to the web. The draft policy recognizes that Internet availability should not be a "substitute for public access to the complete documents." However, it does not give guidance on how much agencies can rely on the Internet for distributing materials. It would be helpful to have further guidance on how should agencies address the limitations of web access in a way that is efficient and cost effective for all parties.

**Response:** This comment is outside of the scope of the Policy. It was shared with the Office of Environmental Information, which develops internal Agency Web and information product guidance.

## **IMPROVE CONTENT OF OUTREACH MATERIALS**

### **Include More Information in EPA Meeting Notices**

Environmental Defense:

Advertisements should also have alternative contact information for people who cannot attend the meetings.

**Response:** EPA agrees that advertisements should contain contact information. The Policy contains the following language in the "Provide information and outreach to the public" section



that describes recommended content of outreach materials: ***“The name and contact information (address, e-mail address, telephone and telefax numbers) to reach EPA staff for further information”***. EPA will seek to include this suggestion in public involvement training for EPA staff.

Minnesota Pollution Control Agency:

The MPCA has experienced difficulty participating in EPA sponsored meetings due to poor advance notice and poor communication about meeting details. The Policy should direct EPA to provide clear, advance notices when inviting guests to meetings....The invitation should clearly say who is invited and why, meeting details and agenda, availability of funding for travel, when attendees are expected to arrive and leave, and where to stay.

**Response:** EPA agrees that the Agency should provide clear advance notice of public meetings. The “Conduct public consultation and involvement activities” section of the Policy recommends that *“Agency officials should provide early advance notice of public involvement processes...”* EPA will seek to address these concerns in public involvement training materials for EPA staff.

**Include Key Issues of Interest to the Public in Outreach Materials**

Shoshone Natural Resources Coalition:

The EPA can improve involvement opportunities for minority, low-income and the under served population through early awareness and simplified explanations. Often times the general public is unaware of the potential effects the decisions made by the EPA will have on their community. These potential effects need to be expressed when meeting notices are announced. This needs to be done through all available options including newspapers, radio, flyers etc. If more of the general public were aware of what could happen to the community, they would show a greater interest in being involved. They need to know how these decisions will affect them personally.

**Response:** EPA agrees that outreach materials should contain information on potential effects when possible. The Policy’s “Provide information and outreach to the public” recommends in section “c. Content:” that outreach materials contain information on the *“social, economic, and environmental consequences of proposed decisions and alternatives”* as well as other background and summary information. This section also outlines many suggested methods for ensuring that the information reaches the public, including those suggested in the comment.

Iowa Department of Natural Resources, Water Supply Section:

We have found through several years of public participation efforts in the drinking water program that unless there is a significant fee issue or contamination problem that affects the general public, there will be little public participation from the general public, regardless of socio-economic status. ...The public must first perceive that there is a problem that directly affects them, over which they may have some control if they do make the effort to comment, before that effort will be made.

**Response:** EPA agrees that outreach materials should encourage public involvement. The Policy’s section on “Provide information and outreach to the public” suggests in “c. Content” that EPA clearly describe the issue, including information in the above response, and also suggests that EPA provide *“Specific encouragement to stimulate active involvement by the public, including describing the nature of its influence, roles and potential impact on the decisions.”*

Citizen #10:

There should be materials available aimed at ordinary people, discussing key environmental issues, not just for scientists or politicians, and the policy of involving the public should be consistent throughout the agency. I believe that an educated public will be your best ally.

**Response:** EPA agrees that outreach materials should be understandable to the public. The Policy's section on "Provide information and outreach to the public" suggests that EPA *"Summarize complex technical materials for the public" and "Provide policy, program, and technical information to the affected public and interested parties at the earliest practicable times, to enable those potentially affected or interested persons to make informed and constructive contributions to decision making"*. One of the purposes of the Policy is to *"Establish clear and effective **guidance** for conducting public involvement activities in EPA's decision-making processes."*

Guild Law Center and Michigan Environmental Justice Coalition:

For example, the Public Notice could generate interest in participation by including a section identifying the issues of potential concern or the reasons that members of the public might want to participate in the comment process. Where the EPA has identified an action as effecting an environmental justice community, this information should be included in the Public Notice. The Public Notice could provide affected community members with the confidence to participate by including information about sources of technical assistance and advice, self-help manuals or other publications that the EPA has found to be helpful in particular circumstances, and the technical assistance referral database referenced earlier.

**Response:** See above two responses. In addition, see new language in this section (new bullet in section 4.c. "Content": ***"If available, a list of sources of technical assistance, advice and self-help manuals or other publications that could be helpful to the public."***

Citizens for Responsible Water Management:

Has EPA been duly diligent in finding ways to include maps and diagrams in its notices? I've seen many notices with blank pages that could have carried useful information that is not easily acquired by the general public.

**Response:** EPA agrees that maps and diagrams can be helpful. EPA will seek to include this idea in EPA public involvement training materials.

**Include/Don't Include Estimates of Costs, Effects and Benefits with Proposals**

City of Austin, Texas Water and Wastewater Utility and also the American Water Works Association:

Also, on Page 82340, the Policy lists background documents that are typically developed as part of an outreach effort. In the context of the regulatory stakeholder process, the EPA could improve its efforts by including "back-of-the-envelope" calculations of costs and benefits for the different regulatory options under consideration. This would provide an early screen of options that are really non-starters.

**Response:** The Policy's "Provide information and outreach to the public" recommends in section "c. Content:" that outreach materials contain information on the *"social, economic, and*

*environmental consequences of proposed decisions and alternatives*” as well as other background and summary information. This comment was provided to EPA's Office of Regulatory Management.

Association of State Drinking Water Administrators:

Recent rule proposals and promulgations in the drinking water program have been problematic because the Agency has sought comment on multiple approaches, each potentially having different significant impacts. It is not until the rule is promulgated that states and the public are made fully aware of the Agency's final decisions. In several recent cases, significant decisions were made between rule proposal and promulgation without public comment on impacts and costs associated with those decisions.

**Response:** This comment is outside of the scope of the Policy. It was shared with the EPA Drinking Water program.

American Chemistry Council:

As a fundamental principle, the Council believes that information about the costs and benefits of regulatory proposals and reasonable alternatives is vital to sound decision making. Armed with this information, a risk manager can better evaluate the most cost-effective approach to achieving the Agency's – and the public's – goals of protecting human health and the environment without unduly imposing costs on local, state, tribal, and private entities which bear the costs of implementing regulatory controls. We strongly urge EPA to adhere to the principles set forth in E.O. 12866 (and any successive executive order on regulatory planning and review). The Council was pleased to note that the Agency's proposed policy calls for “outreach materials” to include information of this sort whenever possible, and would urge an even clearer statement in the policy regarding the importance of placing cost and benefit information in the hands of stakeholders.

Environmental Council of the States:

The second point is related: most environmental statutes do not allow, for example, a permitting agency to consider the social or economic consequences of a proposed activity in reviewing the permit application. On page 82340, the Policy recommends that the outreach materials include “Whenever possible, the social, economic, and environmental consequences of proposed decisions and alternatives”. We think this approach misleads the public and often gives rise to public frustration and contentious meetings in which the comments offered by interested citizens do not provide the grounds for rejection of the permit application. In addition, it adds a burden to the environmental staff of any agency to attempt to prepare such analyses.

**Response to above two comments:** EPA appreciates both of these comments. As the commenters point out, in some cases EPA is required to prepare economic analyses (both under EO 12866 and under some statutes). In other cases, consideration of cost is not required and in some cases it is prohibited. It is not EPA's intention to create confusion, but to ensure that information being considered by Agency decision-makers is also available to the public. To clarify this, EPA has revised the Policy to read (new language in bold italics): “***Information on the social, economic, and environmental consequences of proposed decisions and alternatives that has been prepared in connection with the proposed decision***”.

**Include Implementation Guidance with Rule Proposals**

Association of State Drinking Water Administrators:

Unless and until implementation guidance such as data reporting and violation determinations accompanies rule proposals, understanding and thoughtful public response to the issues will not occur. The public and states must understand how a proposed rule will affect them at the local level. This can only be accomplished through review of the implementation requirements to be imposed.

**Response:** This comment is outside of the scope of the Policy. It was shared with EPA's Office of Regulatory Management and the Office of the General Counsel.

Iowa Department of Natural Resources, Water Supply Section:

Goal: "To ensure that the public understands official programs and the implications of potential alternative courses of action." To assist with this effort in understanding new rules, it would be most helpful if the implementation guidance was put out in draft form with the proposed rule, and then in the final form very shortly after the final rule is published. Often, the implementation guidance is out several months, if not years, after the final rule is published, by which time the States have already notified their public of the upcoming rule, and have already developed their rules and implementation plans. Technical guidances should also be issued as soon as possible, and at least concurrently with the final rule.

**Response:** This comment is outside of the scope of the Policy. It was shared with EPA's Office of Regulatory Management and the Office of the General Counsel.

## **Include Exposure/Emission Limit Information in Technical Documents**

Guild Law Center/ Michigan Environmental Justice Coalition::

The broader list of publications and documents that the EPA has identified as potentially useful are also important. At minimum, we ask that the EPA ensure that the technical documents made available for any agency permitting action or approval of any cleanup, remediation or restoration plan indicate the relevant exposure or emission limits, along with the statutes or regulations that establish those limits.

**Response:** This comment is outside of the scope of the Policy. It was shared with EPA's Office of Regulatory Management to consider for future decision making.

## **Require EPA to Provide More Information in Public Notice Documents**

Guild Law Center and Michigan Environmental Justice Coalition:

The GLC and the MEJC applaud the EPA's stated commitment to providing the public with "accurate, understandable, pertinent and timely information in accessible places. . . ." Draft Policy, 65 Fed. Reg. at 82340. We believe that one of the most effective means of distributing information is to ensure that it is included, or its availability referenced, in all public notice documents. Public notice documents are generally the most widely circulated materials on specific agency actions and are the primary means of generating interest in an agency action or decision. We believe that the Draft Policy should mandate that Public Notice or public outreach documents include, at minimum, the information listed in Section 4.c (described as potentially to

be included in public outreach documents). EPA officials should only be allowed to omit any of the listed information where they can demonstrate that it is not relevant or that it is too lengthy to be included in the Public Notice itself. In the latter case, EPA officials should be required to refer to the existence of and method of acquiring this information.

**Response:** EPA agrees with the general goal of using notices to provide information or identify where it can be obtained; however, this Policy cannot mandate any specific practice. The Policy contains guidance to EPA staff for effective public involvement in EPA decision-making processes. It is not a rule and, therefore, does not impose any specific requirements on EPA.

#### Environmental Defense:

Finally, information is essential for effective participation. It is not only enough for EPA to ask the public for feedback, but it needs to provide them with the information it needs to participate effectively. This means increasing the public's right-to-know and providing the public with more information than is currently available. In addition, the information needs to improve so it reflects the actual state of the air, water and land, and not just regulatory or statutory activities.

**Response:** EPA agrees that the Agency should provide information to the public that enables them to effectively participate in EPA's decision-making processes. This comment was provided to the Office of Environmental Information, which develops internal Agency Web and information product guidance. In addition, the OEI is leading an Agency-wide initiative to improve environmental information on the conditions of our nation's air, water and land resources. Part of the long-term goal of the Agency is to enhance information on the health of ecosystems, and on the impacts on human health from environmentally-related diseases. The first product produced as a part of this effort is expected to be the EPA State of the Environment Report.

*[Note: It is expected to be released in the spring of 2003 -- **SOON!!! CHECK!**].*

#### **Draft Policy Requires Too Much Information to the Public**

##### Alabama Department of Environmental Management:

This proposal has also expanded the activities that will require outreach to include selection of plans for remediation, clean up, etc. Furthermore, this proposal expands the requirement for information to be provided by the Department as part of the outreach activity from the current fact sheet with the facility history, facility design, and permit/modification information to then include: identifying the role of the public in the specific decisions, summarizing complex technical materials, providing translations, providing tentative information, and providing social, economic, and environmental consequences of proposed decisions and alternatives. To enact a policy such as this, at the individual work plan level, would cause major delays in the assessment and remediation of contaminated sites and could effectively bring clean up progress at these sites to a halt.

**Response:** EPA disagrees. The Policy contains guidance to EPA staff for effective public involvement in EPA decision-making processes. It is not a rule and, therefore, does not impose any specific requirements on EPA or on any state.

##### Alabama Department of Environmental Management:

This language may be interpreted to mean that the Department would be required to give specific information (fact sheets, summaries, time tables, resource guides) along with alternative courses of action, tentative determinations, and predictions of social, economic, and

environmental consequences of proposed decisions and alternatives to everyone on the contact list. The Department does not believe it is appropriate for individual project managers or the Department to determine social and economic consequences of proposed and alternative decisions.

**Response:** EPA disagrees. The Policy contains recommendations for effective public involvement in EPA decision-making processes. It is not a rule and, therefore, does not impose any specific requirements on EPA or on any state. With regard to economic and social impacts, the Policy has been revised to clarify that it does not require preparation of information not already required. See new language in the "Provide information and outreach to the public" section (new language in bold italics): "***Information on the social, economic, and environmental consequences of proposed decisions and alternatives that has been prepared in connection with the proposed decision***".

### Property Rights and Public Education

Property Rights Congress of America, Inc.:

...Relating to education and outreach, please make it known that efforts to "balance" environmental concerns while protecting private property rights and natural resource production is not being "anti-environmentalist."... Americans must be re-educated to know that natural resource production is not only the creation of our nation's wealth, our economic independence, but the bread and butter on our tables, and the clothes on our backs.

**Response:** This comment is outside of the scope of the Policy.

### TIMING OF INFORMATION TO THE PUBLIC Need Adequate Notice of Public Meetings

Michigan Environmental Council:

While we recognize the statutory limitations on the extent of many public comment periods, preparation of effective testimony at public hearings and meetings demands adequate notice. MEC recommends that a two-week notification standard be adopted for these situations.

Property Rights Congress of America, Inc.:

EPA should not hold any public hearings or public meetings until 30 days AFTER publication of Notice in the Federal Register.

Citizen #11:

The public in affected areas should have ample and timely notice of stakeholders' meetings.

American Water Works Association:

EPA needs to continue to improve its outreach efforts to provide adequate notice of meetings. AWWA continues to be concerned at the lack of adequate notice of meetings on drinking water issues.

Minnesota Pollution Control Agency:

The MPCA has experienced difficulty participating in EPA sponsored meetings due to poor advance notice and poor communication about meeting details. The Policy should direct EPA to

provide clear, advance notices when inviting guests to meetings. Attendees often need many weeks to figure out who should attend, to procure travel authority and to make arrangements.

Wisconsin Department of Natural Resources:

... in the discussion of timing (p. 82342 middle column), 15 days is rarely sufficient notice for the public to plan and schedule attending a meeting. Change this sentence to read "Generally notice should be given not less than 30 days in advance of an impending meeting or consultation process." Since this is a guideline and not a minimum requirement, the longer time frame is more suitable.

**Response to above six comments:** EPA agrees that the Agency should provide adequate notice prior to public hearings, meetings and comment periods. See revised language in the "Conduct public consultation and involvement activities" section of the Policy dealing with "e. Timing: *"Agency officials should provide early advance notice of public involvement processes so that the public can obtain background information, formulate their needs and interests and obtain expert assistance, if necessary. **Minimum time frames for notification of public hearings and public meetings will vary according to the applicable regulations and the complexity of the issue. For example, for actions subject to the public participation requirements of 40 CFR Part 25, the regulations require EPA to provide at least 45 days' notice before public hearings, but that time may be reduced to 30 days if there are no substantial documents to be reviewed and no complex or controversial matters to be addressed at the hearing. 40 CFR § 25.5** If the issues are unusually complex or involve review of lengthy documents, this period generally should be at least 60 days. **EPA may further reduce or waive the hearing notice requirement in an emergency situation in which EPA determines that there is an imminent danger to public health. 40 CFR § 25.5.**"* This issue is intended to be included in public involvement training for EPA staff.

Washington State Department of Ecology, Toxics Cleanup Program:

EPA should give public notice at least 10 days prior to a public meeting (and again 1-2 days prior) in multiple media venues. Notice is often given 1-2 days before a meeting and sometimes the same day only by word of mouth. This does not allow individuals to make it part of their schedule, especially when considerable travel is required. Notice is also often overlooked. Meetings are held and the public complains they did not know about the meeting. If interested parties cannot readily find the information about upcoming public meetings, the general public will have an even greater difficulty finding out about meetings.

**Response:** See above response, as well as other recommendations in the same section "d. Notification:"

Citizen #5:

The public must be able to attend public stakeholder meetings. EPA should provide significant advance notice of public stakeholder meetings, and should do its best to make sure the affected public is invited to the meeting. This includes advertising the meeting in public spaces (other than just the Federal Register notice), providing scholarships for the public to attend these meetings, and possibly holding meetings in "the field" as opposed to Headquarters or regional EPA offices.

**Response:** EPA agrees that the Agency should provide effective public notice for stakeholder meetings. These suggestions are contained in the Policy.

### **Provide Information to the Public at Early Proposal Stages**

#### Sierra Club, Committee on Environmental Justice:

Again, the Policy speaks to the important issues, but fails to deliver any changes from practices causing the main frustrations in the community. The Policy suggests that information be provided to the public at the earliest practicable times, yet seldom is this the practice. For better participation, not to mention fairness, the earliest practicable time must mean at the earlier proposal stages rather than the often-statutory notice-and-comment time-periods when finalized proposals are aired. Industrial permit applicants, for example, often have months of dialogue with state and federal agencies in order to refine applications, before a "draft" is released for public comment. In such cases, public comment is often solicited on what is in actuality a done deal.

**Response:** EPA agrees that it is desirable to involve the public early in the decision-making process, and the Policy so states in the Purpose and steps 1, 3, 4 and 5. Public involvement training for EPA staff intend to emphasize the importance of providing early involvement opportunities.

### **Provide Requested Information Quickly**

#### Citizen #12:

Follow up, exercise independent action. I requested information of Mr. Hernandez on how to approach it. He immediately sent me the information. This is how you need to communicate when asked for information. Follow up to complaints is essential.

**Response:** This comment is outside of the scope of the Policy. However, EPA's 1997 Customer Service Standards include these suggestions. These standards can be seen at <http://www.epa.gov/customerservice/standards.htm>.

### **Define Specific Time Frames for Early Public Involvement**

#### Washington Department of Ecology, Nuclear Waste Program:

It has been our experience that defining a time frame within which the agency will provide information is helpful and helps avoid miscommunication. For example, the Tri-Party Agreement Community Relations Plan states that the three agencies will strive to include stakeholders "30-45 days in advance" of the beginning of public comment periods. This provides a guideline for both public involvement staff and technical staff for preparation of materials for distribution, and helps reduce conflict over when stakeholders can expect to receive information. This helps reinforce our commitment to involving stakeholders early in the decision-making processes, thereby strengthening our stakeholder relationships.

**Response:** EPA agrees that the Agency should provide adequate time frames in which the public can provide input. See revised language in the "Conduct public consultation and involvement activities" section of the Policy (new language is in bold italics): "e. ***Timing:*** *"Agency officials should provide early advance notice of public involvement processes so that the public can obtain background information, formulate their needs and interests and obtain expert assistance, if necessary. **Minimum time frames for notification of public hearings and***



***public meetings will vary according to the applicable regulations and the complexity of the issue. For example, for actions subject to the public participation requirements of 40 CFR Part 25, the regulations require EPA to provide at least 45 days' notice before public hearings, but that time may be reduced to 30 days if there are no substantial documents to be reviewed and no complex or controversial matters to be addressed at the hearing. 40 CFR § 25.5 If the issues are unusually complex or involve review of lengthy documents, this period generally should be at least 60 days. EPA may further reduce or waive the hearing notice requirement in an emergency situation in which EPA determines that there is an imminent danger to public health. 40 CFR § 25.5. "*** This issue will also be included in public involvement training for EPA staff.

## **PUBLIC COMMENT PERIODS**

### **Provide Adequate Notice of Public Comment Periods**

#### National Cattlemen's Beef Association:

Due to time constraints, members of the public may choose not to comment on issues that directly affect them, thereby limiting the amount of useful input. Therefore, NCBA/ICA supports efforts made by the Agency to inform the public in a timely fashion on comment periods and when and where informative materials are available to them.

#### Idaho Cattle Association:

Due to time constraints, members of the public may choose not to comment on issues that directly affect them, thereby limiting the amount of useful input. Therefore, NCBA/ICA supports efforts made by the Agency to inform the public in a timely fashion on comment periods and when and where informative materials are available to them.

**Response to above two comments:** EPA agrees that the Agency should notify the public in a timely fashion. These suggestions are reflected in the Policy.

### **Provide Information Early to Affected Parties**

#### National Association Of Home Builders:

In addition to longer comment periods, there are other tools that EPA can use to assist the public in maximizing the effectiveness of the notice and comment period. These include early identification of affected parties, prenotification of subject matter, early availability of technical materials, and the expanded use of websites and material summaries. NAHB believes these tools can increase the effectiveness of public involvement processes.

**Response:** EPA agrees that the Agency should use a variety of tools to assist the public in using the notice and comment period effectively. EPA will seek to include these suggestions in public involvement training for EPA staff.

### **Post Electronic Documents at Start of Public Comment Period**

#### Citizen #5:

The public should be given a reasonable amount of time to comment on policy documents. This includes posting the document for comment on the same day as announcement of the document. While using the Internet to post documents for comment is a good, if EPA does not make these documents available electronically as soon as the comment period begins they are really shortening the comment period. This puts the public at a disadvantage-- those who have a

full-time job not related to the policy have a hard enough time commenting on documents during most comment periods.

**Response:** EPA agrees that the Agency should post electronic documents on its web site at the beginning of public comment periods. In the section on "Provide information and outreach to the public" the Policy recommends that EPA: *"Provide policy, program, and technical information to the affected public and interested parties at the earliest practicable times..."* Also in the Policy's "Conduct public consultation and involvement activities" under "Common examples:" the policy lists ***"Interactive methods that provide participants with opportunities to discuss the issues and their input with the Agency through public meetings, listening sessions, workshops, availability sessions, open houses, interviews, focus groups or surveys, Internet-based dialogues and other methods (Note: Some of these types of exchange activities, including surveys and Internet dialogues, potentially are subject to provisions of the Paperwork Reduction Act and security and privacy constraints)"***.

## Have Flexible Public Comment Periods

### McNulty Group:

There are all kinds of very sound reasons to limit the length of formal comment periods. If deadlines are to be met, and projects managed effectively, the formal comment period must be clearly defined, and limited to a period of time that "meshes" with the overall project schedule. However, that does not mean decision makers shouldn't be listening (and trying to understand) before the beginning of the formal comment period, and certainly they should not close their ears at the end of the period. If someone has a thought or viewpoint that might "make or break" a project, you want to hear it -- you need to hear it -- even if it is late. It is better to avoid saying "the comment period closes ..." for that actively discourages later comments that may be critically important to the success of your work. Instead say: "Work on the draft, revision, or final form of XYZ project will begin on (insert date) and comments received before then will be the most useful and be assured consideration. However, because we are always striving to improve our work and procedures, comments and suggestions are welcome at anytime." That way you have a better chance of hearing something you should know, even if it is later than you wish when you hear it.

**Response:** EPA appreciates the comment. In some cases, EPA program offices have the discretion to accept public comments after the end of the comment period. However, EPA may not be able to consider late comments due to time constraints. EPA will seek to include this suggestion in public involvement training materials for EPA staff.

## Allow Longer Comment Periods

### Iowa Department of Natural Resources, Water Supply Section:

Page 82341: We agree with the statement that "The more complex the issue and greater the potential for controversy or misunderstanding, the earlier the materials should be distributed." All rules and guidance documents should have a 60-day comment period at a minimum.

Columbia River Crab Fisherman's Association:

The public generally has a hard time adequately responding to a complicated issue in a 30 day time frame, 45 to 60 days is more appropriate, depending on the responsiveness of the EPA to request for additional information that needs reviewing.

Citizen #5:

The length of comment periods should be tied, when possible, to policy complexity. For example, allowing only 30 days to comment on a proposed TMDL is insufficient.

Association of State Drinking Water Administrators:

The sheer volume of documents to be reviewed (more than 1,000 pages for drinking water rules and guidances last Spring) either becomes too daunting for public response or results in less than thorough reviews by stakeholders and other interested parties in the limited time allowed for review and comment. Comment periods at the Federal level should be at least 60 days – longer if the proposal is complex or requires compiling data and information to ascertain impacts.

Shoshone Natural Resource Coalition:

In order to have effective public input to the many technical documents that come in to play during any proposed project, the public MUST be given time to understand those documents. The public may need to seek professionals to translate the technicalities. The public may need to hold various meetings to get a broad representation of comments from their community. Assistance (noted in point 2 above) also can take a lot of time to put into place. These needs and others like them take time. A minimum 30 day comment period implies that the Agency doesn't REALLY want substantive comment from the public. The minimum should be 60 days with allowance for reasonable extensions.

National Association Of Home Builders:

EPA Should Maximize the Effectiveness of Public Notice and Comment Opportunities. In its prior comments, NAHB opined that it would be helpful to have longer (120 day) and more consistent notice and comment periods. While EPA responded that many of these notice and comment periods are set by statute and that EPA has no discretion over them, NAHB believes that the spirit of its earlier comment remains valid. While EPA is correct that many notice and comment periods are set by statute, the point is that comment periods should reflect the magnitude of the issue, and some comment periods provided by EPA are simply not long enough. Comment periods should be sufficiently long for interested parties to conduct independent research on the impact of EPA proposals. NAHB has found that EPA tends to utilize shorter, rather than longer, comment periods and this tends to limit the amount and quality of data that can be generated

**Response to above six comments:** EPA agrees that longer public comment periods should be considered for complex issues. In the Policy's section on "Conduct public consultation and involvement activities" the Policy states in **"e. Timing:** *"Agency officials should provide early advance notice of public involvement processes so that the public can obtain background information, formulate their needs and interests and obtain expert assistance, if necessary.*

**Minimum time frames for notification of public hearings and public meetings will vary according to the applicable regulations and the complexity of the issue. For example, for actions subject to the public participation requirements of 40 CFR Part 25, the regulations require EPA to provide at least 45 days' notice before public hearings, but that time may be reduced to 30 days if there are no substantial documents to be**

**reviewed and no complex or controversial matters to be addressed at the hearing. 40 CFR § 25.5** *If the issues are unusually complex or involve review of lengthy documents, this period generally should be at least 60 days. EPA may further reduce or waive the hearing notice requirement in an emergency situation in which EPA determines that there is an imminent danger to public health. 40 CFR § 25.5.* ” This issue will also be included in public involvement training for EPA staff.

Minimum comment periods may be set in regulations, statutes, or Executive Orders. EPA managers choose the length of a specific comment period based on the complexity and other aspects of the rule or other proposed actions. The Policy is meant to enhance public involvement. It should foster better planning and enable managers to engage the public in discussions during the development of proposals, prior to opening a formal comment period on proposals, and to set the length of comment periods that give the public adequate time to develop comments.

### **Consider Community Needs when Setting Comment Periods**

#### Guild Law Center/ Michigan Environmental Justice Coalition:

The Draft Policy also references the appropriate time period for public comment. Where this comment period is flexible, the GLC and the MEJC believe that EPA should gear the length of the comment period to the character of the affected community as well as the complexity of the issue being considered. For example, if a community is new to public participation, as indicated by the lack of a developed notification list; has not organized around environmental issues, as indicated by the lack of awareness of or concern over a given issue; does not speak English as a first language; or qualifies as an environmental justice community, we believe that the comment period should be extended to ensure that these communities have an adequate opportunity to educate themselves about the agency's proposed action, develop a position on the action and find the expertise and resources needed to support that position.

**Response:** EPA agrees that when flexibility is possible, the Agency should consider the community's needs when determining the length of public comment periods.

### **ACCESS TO EPA INFORMATION**

#### **Make Hardcopy Information Accessible to the Public**

#### Wisconsin Department of Natural Resources:

....under recommended actions (p. 82340, middle column), another bullet should be added that parallels the last bullet. This new bullet would read, “Consider whether EPA should provide documents through special methods to reach affected public or interested parties” to recognize barriers other than language differences.

**Response:** EPA does not agree that another bullet is needed. This suggestion is reflected in the language of the “Provide information and outreach to the public” section “a. Actions:” of the Policy.

#### American Library Association:

Libraries provide gathering places where community members can meet and debate important issues. Working with the EPA, librarians can organize informational meetings where EPA policies and regulations can be introduced, debated, and discussed. Libraries can serve as distribution centers for EPA reports, brochures, booklets and other resources. Librarians can

serve as instructors for workshops to provide essential training in environmental resources, and can offer small businesses information on issues such as protecting the environment, adhering to regulations, participating in pollution prevention and energy savings programs.

**Response:** EPA agrees that partnerships with libraries should be further developed. In September 2000, EPA sponsored a two-week Internet-based Dialogue, "Libraries as a Community Resource for Environmental Information" with a focus on how libraries and EPA could work together to increase the capacity of communities and individuals to participate in EPA's decision-making processes but also in environmental decision making at any level. The messages from that event are still available at <http://www.network-democracy.org/epa>. Many other suggestions on roles for librarians and libraries are contained in the messages exchanged during the event.

#### Environmental Defense:

The information should not only be made available online, however. EPA needs to ensure that those without Internet access can still get the best information through, for example, hard copy reports, libraries, and so on.

**Response:** EPA agrees that the Agency should use both traditional and electronic means to provide information to the public. The Policy includes these suggestions in the section on "Provide information and outreach to the public."

#### Sierra Club, Committee on Environmental Justice:

The Sierra Club is pleased to see the Policy suggest localized depositories or dockets. In many delegated programs, states and local governments are ill-equipped to provide access to information. Although most government entities will put a copy of a permit application, for example, in a local public library, the application alone is seldom sufficient for community members who wish to make more detailed comments. Never mind the local depositories, many state and local programs do not even maintain docket systems at all - even within the agency. All material relevant to a particular agency decision is often not all in the same place. Freedom of Information Act requests (or state equivalents) are often the only method by which more complete information can be obtained, but such requests are time-consuming and expensive for both the agency and the public. Simple organizational and docket structures could minimize the problems, and the guidance should be stronger on this point.

**Response:** Although this comment is outside of the scope of the Policy because it refers to information availability through state and local agencies (and the Policy only applies to EPA's activities), EPA agrees that the Agency should use localized depositories where possible and appropriate. Please see new language in the Policy's section on "Provide information and outreach to the public" item b(1) (new language in bold italics): ***"Publications, fact sheets, technical summaries, bibliographies, resource guides, relevant supporting documents and other printed and electronic materials. (These materials may be made available through the mail, on the EPA web site, and at information repositories such as EPA regional and field offices, federal depository libraries and local public libraries, and state/tribal/local agencies.)"***

#### Bison Land Resource Center:

In a rural area such as South Dakota, especially when a long and/or complicated environmental document is involved, library access is not the solution to these problems. Distance alone will

keep most people from being able to provide meaningful input, with people in most areas of the state having to travel at least 50 miles to get to a repository library. Library access should be provided, but additional copies of documents should also be available to late-comers, and comment periods should be extended. Anyone who has a job or a family is not likely to be able to spend several weeks (assuming they read fast) in a library reading a lengthy DEIS. People with both jobs and families would find this a hopeless task.

**Response:** Although this example illustrates a problem encountered with another agency, EPA's will seek to ensure that public involvement training materials and best practices information reflect the need to recognize and accommodate local difficulties in accessing information and other important local issues when planning public involvement activities.

#### OMB Watch:

EPA should establish an ongoing program with public libraries, depository libraries, and community technology centers to provide access to EPA information, coupled with efforts to educate the public about use of the data.

**Response:** EPA agrees that partnerships with libraries should be further developed. In September 2000, EPA sponsored a two-week Internet-based Dialogue, "Libraries as a Community Resource for Environmental Information" with a focus on how libraries and EPA could work together to increase the capacity of communities and individuals to participate in EPA's decision-making processes but also in environmental decision making at any level. The messages from that event are still available at <http://www.network-democracy.org/epa> . Many other suggestions on roles for librarians and libraries are contained in the messages exchanged during that event and also during the two-week Internet Dialogue on Public Involvement in EPA Decisions, held in July 2001 available at <http://www.network-democracy.org/epa-pip> .

#### **Allow Fuller Access to EPA Information**

##### Sierra Club, Committee on Environmental Justice:

The relevant information, as the Policy suggests, must be fully accessible. But this must mean all the information on which the agency is basing its decision. Too often agencies allow permit applicants to rely on claims of "confidential business information" to keep information they've submitted to the agency from being available to the public for review. Agencies are never critical enough of such claims, allowing years-old production data, for example, and important scientific and biological testing from being fully ventilated. The Sierra Club recognizes the need to protect truly confidential business information, but just because the applicant has rubber-stamped their materials with a big red "CBI" doesn't make it confidential.

**Response:** EPA agrees that all information upon which a decision is based should be available to the public unless there are security, privilege or legitimate Confidential Business Information (CBI) reasons for limiting access. EPA's regulations (40 CFR Part 2, Subpart B) set out the CBI requirements.

##### Sierra Club, Committee on Environmental Justice:

The Sierra Club applauds the suggestion that the agency make "special efforts" to summarize complex technical data, and to write documents in "plain language that the public will easily understand." However, this must not be a substitute for complete access to the data itself, nor should this be a substitute for technical or financial assistance to communities. And most

importantly, the plain-language summaries must not be simply an effort to sanitize or minimize the issues of interest to the public. For example, the Policy suggests summaries may be among the outreach materials generated “if relevant,” but this requires the agencies’ prior conclusory determination of what is or isn’t relevant to the public’s interest. Similarly, an agency’s “delineation of the issues and the interests that they may affect” or their defining “alternative courses of action” or describing “tentative determinations” are ultimately conclusory and limiting of fuller participation. Early involvement, complete access, and technical or financial assistance where necessary are much more important for public participation.

**Response:** EPA agrees that early opportunities for involvement, access to information and assistance are important to public involvement processes. The Policy’s section on “Provide information and outreach to the public” states that *“Fact sheets, news releases, summaries, and similar publications... should not be a substitute for public access to the complete documents.”* The Policy recommends creation of summaries and fact sheets to provide a first round of information that enables the public to decide if they want to involve themselves in an issue. It is therefore very important that plain English summary materials are available.

### Provide Materials Free of Charge

Columbia River Crab Fisherman's Association:

Pertinent materials requested by those that comment to a proposed should be supplied free of charge under normal circumstances without resorting to the FOIA process.

**Response:** In the Policy’s section on “Provide information and outreach to the public,” EPA states that *“To the extent practicable, provide the public with integrated, on-line, user-friendly access to health and environmental data and information and to the extent practicable, enable communities, including minority, low-income and underserved populations, to have access to relevant data and information.”* In the same section, the Policy also states: *“When practicable, EPA should provide information in formats and locations that match the public's needs,”* and *“The Agency should provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Suitable locations will depend on the nature of the action.”* Much of this access is free. Further, in the same section, under “f. Fees for Copying: ***In responding to a request for records, the Agency will follow its regulations implementing the Freedom of Information Act ("FOIA") at 40 CFR Part 2. The Agency may waive the fees associated with a FOIA request, pursuant to the criteria listed at 40 CFR 2.107(l), if disclosure would contribute to public understanding of government operations and is not primarily in the commercial interest of the requester.”***

### Provide Real-Time Local Environmental Information

Environmental Defense:

EPA officials need to ask themselves and the public whether environmental information is easy to access and use and whether it tells people about the conditions where they work, live, or play. We’ve found that while the agency does a good job of making existing environmental information available to the public, the information is not easy to use and does not do enough to inform people about what they can do to protect their health and local environment. People need to be well-informed to effectively participate in their community through activities such as formulating comments on EPA policies or taking action against specific facilities (e.g. consent orders). To that end, EPA must follow up on its goal to provide people with timely (ideally real-time)

information (in various languages) so they can make informed decisions about their actions and effectively contribute to EPA activities. EPA's EMPACT program is a step in the right direction of providing this kind of information to the public, though the future of the program is in doubt as President Bush's proposed budget does not contain funding for EMPACT.

**Response:** The Agency agrees that a public that is informed about environmental issues can make good personal decisions about their health and local environment and can better contribute to EPA's decision making. However, insofar as the comment relates to EPA's web site it is outside of the scope of the Policy. This comment was provided to EPA's Office of Environmental Information.

## **Improve Methods for Public to Learn about EPA**

New York State Department of Health, Center for Environmental Health:

EPA has many avenues that people can use to become educated about EPA and what EPA does. We would like to see EPA continue to strive to improve the methods used by the average person to gather information about EPA and its programs. Also these systems should continue to be easier to use.

**Response:** EPA agrees that the Agency should continue to improve the methods the public can use to obtain information, and the Policy recommends many ways to improve public access to information about EPA and EPA's programs. This comment was also provided to EPA's Office of Environmental Information.

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## **9. FUNCTION (NOW STEP) 5. CONDUCT PUBLIC CONSULTATION AND INVOLVEMENT ACTIVITIES**

### **GENERAL ISSUES**

#### **Public Should Help Define the Contours of Public Discussions**

Sierra Club, Committee on Environmental Justice:

The Policy suggests that "agency officials should clearly identify issues to be discussed, negotiated, or decided prior to and throughout the engagement process so that the public understands which decisions are subject to its input." But this type of top-down determination will tend to stifle public participation, not promote it. If, in fact, the public is invited to participate early as the Policy suggests, and the public is provided with adequate information early, then the public should also be able to participate in defining the contours of the discussion as well. For example, the public should be afforded the opportunity to assist in the development of public participation work plans.

**Response:** EPA agrees that when possible, the Agency should involve the public when developing public involvement processes. In the "Conduct public consultation and involvement activities" section, the Policy recommends: ***"When possible, consult or involve the affected public to ensure that the approaches selected consider and, if appropriate, accommodate the potentially affected parties' needs, preferences, schedules and resources, as well as the Agency's needs."*** The phrases noted in the comment are included in the Policy because EPA believes that it is important to clarify for the public the issues that are under discussion, as well as the roles of the public and the agencies involved. In most cases,



the range of issues that is relevant will be limited by the nature of the Agency decision or action being discussed. While the public can usefully help frame the issues, it is also important to make members of the public aware of the limits on the scope of discussion.

### Consultation Categories Listed in the Policy are Too Stark

Sierra Club, Committee on Environmental Justice:

...the “categories” of consultation techniques are too stark. The Policy should not limit participation to the simplified “information exchange,” “recommendations,” and “agreements.” For example, a public process designed for “information exchange” such as the normal notice-and-comment procedures must allow comments to rise to the level of “recommendation” or the entire process may be pointless from the public’s perspective. As a corollary, the ability to make “recommendations” must not be limited to those select “stakeholder representatives” invited to collaborate with each other and agency staff. The Policy recognizes our point, namely that the categories are “not mutually exclusive” but that they “form a progression.”

**Response:** EPA agrees, and changed the “Conduct public consultation and involvement activities” section in many ways. The following language now appears in that section, along with brief descriptions of common public involvement methods (new language in bold italics):

***General descriptions of public involvement methods follow, including their purposes, common examples, and key actions. The following list of public involvement methods is not exhaustive. Its variety demonstrates the need for program officials to be flexible and to obtain information that enables them to choose the appropriate techniques for each situation. EPA staff also should review the Agency’s detailed public involvement manuals and guides when planning public involvement activities. (See Addendum 1 for a list of key resources.)***

### Allow as Much Consultative Public Involvement as Possible

Sierra Club, Committee on Environmental Justice:

But the Policy makes the statement that “progressing to a recommendation process or agreement process is not necessary, practical or affordable in all decision making processes.” The Sierra Club believes that a fundamental purpose of the public participation guidance is to place the public as high on the Arnstein ladder of participation as is possible, and the Club believes that waiving off such a goal as unnecessary, or impractical, or not affordable is essentially a copout.

The Sierra Club believes that better public participation comes when it occurs higher on the “ladder” of participation. Too often public participation in environmental decision making occurs on the lower rungs. The goals of the participation are more often “placation” (communities get to negotiate tiny concessions) or “manipulation” (communities subjected to public relations campaigns) rather than “control” or “partnership” in the decision making.

**Response:** EPA agrees with the general goal of enhancing public involvement. However, EPA also believes that the more participatory public involvement practices are not appropriate to all decision-making processes. In the “Conduct public consultation and involvement activities” section of the Policy, EPA recommends that programs ***“Identify and select public consultation or involvement processes appropriate for the scope of the decision and the time and resources available.”*** EPA needs to use a variety of methods because its decisions vary widely in complexity, scope and impact. In addition, EPA should not strive for consensus in all decisions, and its programs operate with limited resources. However, EPA will strive to

promote the appropriate use of more participatory techniques in public involvement training for EPA staff. Please see an interpretation of the Arnstein ladder on page viii of the EPA December 2000 report 'Engaging the American People,' which can be seen at <http://www.epa.gov/publicinvolvement/policy.htm#engaging>

University of Calgary, Department of Economics:

The most important criterion that EPA can set is that, when policy is being created or implemented, public involvement should be in the form of consensus building. First, it is only when all interested parties have a direct influence over policy development that the outcome can be expected to maximize social benefits. Second, when parties have a direct influence, the benefits to them of participating increase, making it more likely that EPA will reach its goal of maximizing the level of participation.

**Response:** EPA agrees that consensus-based public involvement is appropriate in some circumstances, which is subject to the Federal Advisory Committee Act; however, in many cases a consensus approach in the sense of unanimous consent is not desirable or realistic. See above response.

University of Calgary, Department of Economics:

In many cases, policy is made and implemented in a two- (or multi-) stage process. In the first stage, the central agency creates a general policy that applies broadly across a large number of regions or industries. For example, a national policy might be developed for determining maximum permissible air pollutants from manufacturing operations. In the second stage, those general regulations are then modified to apply to specific industries, watersheds, or regions. For example, specific air pollutant regulations may be established for each of the wood furniture, architectural coatings, and coke oven industries. Each of these industries has developed regulations through the use of a negotiated rulemaking process. See David Pritzker and Deborah Dalton, *Negotiated Rulemaking Sourcebook*, (Office of the Chairman, Administrative Conference of the United States, Washington, D.C.), September 1995, pp.392-394. My recommendation is that consensus-building processes be employed at both (all) levels of policy making. In most agencies, of which I believe EPA is one, public participation at the first stage is generally limited to information exchange or solicitation of "recommendations." The ultimate decision making authority is left to employees of the agency. But if consensus building is not used at this stage, the agency will encounter difficulty selecting the socially preferred outcome. In part, this problem could be overcome if the policies created at the first stage were sufficiently "loosely" written that participants at the second stage could negotiate the preferred outcome. However, (a) central agencies generally establish "tight" policies and (b) the less precise are the directives from the first stage, the less benefit there is from employing that stage. Yet there are benefits from centralizing some decision making. For example, centralization creates economies of scale and broader representation can be obtained if relatively small groups are able to concentrate their resources on a small number of negotiations. It is important that the regulations established in the first stage of negotiations are not so tightly written that the parties at the second stage have little flexibility. First, local and industry-specific groups will have more information about the specifics of their situations than will national groups. This information will be lost if local groups are prevented from changes to the first stage policy. Second, the EPA will find it very difficult to induce groups to participate in local decision making processes if there is very little probability that those processes will yield policies that are significantly different from those that would arise in the absence of participation.

**Response:** This Policy encourages public involvement at all stages of the policy process. This includes decisions on broad environmental goals and standards as well as those on narrower policies. However, a consensus requirement if universally applied could significantly impede decision making. Public involvement processes involving consensus are subject to the Federal Advisory Committee Act. Therefore EPA uses this approach judiciously.

### **Consider the Stakeholder Report Written by Resources for the Future**

#### Environmental Defense:

First, however, we want to mention a comprehensive Resources for the Future study by Thomas C. Beierle entitled "The Quality of Stakeholder-Based Decisions: Lessons from the Case Study Record" (November 2000) that showed that stakeholder processes can lead to better decisions by adding new information, ideas and analysis. Their research also showed that the higher the degree of public participation—ranging from public hearings to negotiations—the better the outcomes were. While we commend EPA for re-evaluating its Public Participation Policy, and its increased commitment to effectively enact it throughout the Agency and in the States, we urge the Agency to consider this study when deciding on the extent of its public participation activities.

**Response:** EPA appreciates the comment, and intends to include information from this study in its public involvement training for EPA staff. EPA staff who developed the Policy and implementation activities reviewed Mr. Beierle's draft report, engaged him in EPA's July 2001 online dialogue on public involvement and its evaluation, and seek his advice on both evaluating EPA's public involvement activities, and on developing our public involvement evaluative tools.

### **Describe/Define More Fully the Roles of the Public and EPA in EPA Decisions**

#### McNulty Group:

Public involvement is not asking the public to do your job. It should not be asking the public to make your decisions, write your regulations, or edit your regulations. Both you, and they, should understand this very clearly from the start. What you need from the public is information, not decisions. Public involvement should give the decision maker (and his or her advisors) information that enables the decision maker to make a wise, informed decision. That means you have to give the public sufficient information to allow them to respond, but you also have to ask them questions that will help them give you the information you need in a form you can use. And, be sure you ask questions they are qualified to answer. If you ask questions that they are unable to answer competently, they will (1) know that, (2) resent it, and (3) attempt to answer anyway, fearing that you are also ill-equipped to answer or you wouldn't be asking them. In a nut shell, public involvement is a part of the decision making process; it is not the decision making process. The person(s) responsible for making the decision must clearly understand this, and the involved public must clearly understand it. Once that understanding is established, public involvement then becomes easy, and a contributor to wise decisions rather than a stumbling block. That happens for two reasons: First, the public understands their role, and will accept it and the responsibility that goes with it as long as they receive prompt feedback that assures them they have been heard \*and\* understood. Second, the decision makers, and their

subordinates, no longer feel threatened now they know that all involved understand it is their responsibility to make the hard choices. Now the decision makers can "think out loud" and treat the feedback they receive back as information rather than as criticism. Naturally there is more involved, techniques to be properly employed to facilitate the understandings mentioned, to reinforce the concept of information verses decisions, and to ensure that commenters know their comments and concerns have been genuinely heard and understood. Those techniques, to be effective, operate long before responsiveness summaries, drafts, and final drafts are issued.

**Response:** EPA agrees that the goal of public involvement is to enable EPA to obtain information from the public that assists EPA in making sound decisions. EPA further agrees that Agency staff and the public should understand their roles in the decision-making process. The Policy provides recommendations for a wide range of public involvement activities from public education to seeking consensus in decisions. EPA does not cede its responsibility for making the decisions that protect public health and the environment, clearly the public's role is to contribute to EPA's decisions as stated in the goals section of the Policy: ***"Effective public involvement will make it easier for the public to contribute to the Agency's decisions, build public trust, and make it more likely that those who are most concerned with and affected by Agency decisions will accept and implement them."***

McNulty Group:

"Public involvement enables the public to work with the Agency and hold it accountable for its decisions." This misstates the function of public involvement. It should be to support wise decision making by those whose job it is to make those decisions; it is not to make those decisions, nor is it to approve or disapprove the decisions. Also, if public involvement is the only way the public has to work with EPA, you have a problem. Get rid of this statement, and the thoughts that go with it.

**Response:** EPA disagrees with this interpretation of "accountable." EPA defines "accountable" in this context as meaning "capable of being explained," that is, through the public involvement process, EPA should provide and the public should understand the basis for decisions. This definition matches the Policy's goal, *"To foster a spirit of mutual trust, confidence, and openness between the Agency and the public."* EPA processes provide the public with opportunities to share their ideas in order to improve its decisions, but not to have the public make those decisions or provide judgement on them. However, EPA decision processes should be transparent so the public can understand what led the Agency to make a specific decision, know what the final decision is and hold the Agency responsible to implement the decision. This concept of accountability is described in the Policy's section on "Review and use input, and provide feedback to the public" (new language in bold italics): ***Gathering and using public viewpoints and preferences involves examining and analyzing public input in relation to scientific and other information relevant to the decision, considering if and how to incorporate that input into final program decisions, and carefully considering public views when making or modifying decisions. For each decision, EPA officials should attempt to find a balance that enables the Agency to consider both relevant scientific and other information and expressed public values in determining how best to protect the public's health and the environment. The Agency should demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Finally, the Agency should communicate the decision to the public and discuss how the public's input influenced the final decision."***

Environmental Council of the States:

First the Policy includes in the list of goals that appears on page 82337: "To promote the public's involvement in implementing environmental laws". Under our system of government, the Executive Branch of government at both the federal and state levels is responsible for implementing the laws, subject to review by the judicial branch. It is misleading to suggest, either broadly in this Policy or specifically at a public meeting that the public has a role in implementing laws. We may ask for public input in how we interpret or implement laws, but government officials make the final decision. The Policy is inconsistent on this point, as later in the document on page 82342, two important suggestions are included:

- "Agency officials should clearly identify issues to be discussed, negotiated or decided prior to and throughout the engagement process so that the public understands which decisions are subject to its input".
- "The type of process to be conducted, the schedule and the assumptions and expectations for the outcomes of the process also should be clearly stated so that the public and its representatives understand whether they are being invited to an information exchange or a negotiation and can set their expectations accordingly".

These are very critical points with which we agree, as our experience has taught us that more meetings do not guarantee a better dialogue. A public meeting can become the forum for grandstanding by a vocal minority, so it is important to look for effective ways to communicate with those parties who are potentially affected. In summary, a very clear understanding of each participant's role in the process is fundamental to effective communication. The Policy should consistently recognize that.

**Response:** EPA appreciates the comment. The "implementing environmental laws" language has been modified, and new language added in the Introduction section of the Policy language: ***"EPA's mission is to protect human health and the environment. To achieve that mission, EPA needs to integrate, in a meaningful way, the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process."***

Through information, education and involvement, the Agency can help individuals, organizations and communities determine the actions and decisions they can take to improve health and the environment from the personal to the national and even global levels.

## **Make Public Participation Requirements Consistent Across EPA Programs**

Wisconsin Department of Natural Resources:

One area that is missing in this laudable effort is for EPA to try and achieve some measure of consistency in the federal regulations covering public participation for the various "media" programs within the agency. It is confusing and frustrating for the public to need to follow different processes, time frames or formats to communicate their thoughts and concerns when such different methodologies are not driven by the nature of the specific "project" for which participation is being sought. EPA needs to make it easy for the public to participate and not to make requirements complex and challenging. Consistency between each program's requirements should be an important objective for EPA.

City and County of Denver, Department of Environmental Health:

We feel that the new policy needs to do three key things: ....

Consolidate the many different public participation requirements that vary across agency programs.

**Response to above two comments:** The Public Involvement Policy is not a regulatory action and therefore cannot be used to consolidate public participation requirements across Agency programs. EPA recognizes the difficulty that arises when different public involvement processes are used. However, specific public involvement processes and time frames are required by specific regulations, such as those found at 40 CFR Part 25 "Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act." A partial listing of existing public participation regulatory requirements is contained in Appendix 2 of the Policy. Although EPA believes that the Policy should provide some consistency and improve the quality of public involvement activities across programs, it also recognizes that public participation processes should be tailored to the particular issue and, therefore, the Policy should remain flexible.

City and County of Denver, Department of Environmental Health:

The Policy Must be More Cohesive, and Bring Together All the EPA's Public Participation Programs. Currently a hodge-podge of public participation requirements and programs exists which is confusing to both EPA staff and the public. Even sophisticated participants in EPA activities have a hard time understanding the various public participation programs, what types of participation are available under which circumstances, and whether public participation is mandated or simply discretionary in a particular instance. The average person has no chance of understanding the system. DEH staff suggest that as part of the new policy, the EPA prepare a checklist of both required and recommended public involvement activities, along with sample forms reflecting the requirements for each statute or program where differing requirements exist. This will enable all involved to know which requirements exist in a particular situation. The checklist should clearly specify the role of the general public, state governments, local governments, and tribes so EPA staff and all others involved will know what is expected and what is required.

**Response:** EPA recognizes the difficulty that arises when different public involvement processes are used. However, the Policy is not a regulatory action and therefore cannot amend regulatory or statutory requirements. EPA attempted to array the public involvement requirements of different environmental statutes into tables in the Appendix to the document "Engaging the American People: A Review of Public Participation Policy and Regulations with Recommendations for Action." Please see Appendix A - Charts of Public Participation Requirements in Key Agency Programs, which can be found at [http://epa.gov/publicinvolvement/pdf/eap\\_appendices.pdf](http://epa.gov/publicinvolvement/pdf/eap_appendices.pdf). These tables were accurate as of November, 2000. Also see "Public Involvement in Environmental Permits A Reference Guide" at <http://www.epa.gov/permits/publicguide.htm> for an outline of the requirements for public involvement in permitting under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and the Safe Drinking Water Act.

**All Techniques Listed in Draft Policy Can't be Applied - Resource Constraints**

Association of State and Territorial Solid Waste Management Officials:

We found the draft policy to contain a remarkably extensive listing of public participation vehicles and techniques, most of which have already been employed by federal and State programs, and many of which have proven to be satisfactory when used in the proper programmatic circumstances. We would be concerned if we believed that EPA intended every one of these

techniques to be applied in all cases, and hope that is not the message. As we understand the policy, the key is that the Agency intends to apply the six basic functions listed on page 82338, and to use as many of the techniques listed thereafter in carrying out those functions. While we agree that functions substantially along these lines assist a successful environmental public participation program, we have to note that each carries considerably different resource implications. While the suggested techniques and vehicles all have merit, their use will also be affected by State judgments about the priority and availability of resources. We are concerned that with this policy the Agency may mistakenly raise public expectations that all levels of government can and will provide the full range of described participatory vehicles and techniques.

**Response:** EPA agrees that the main purpose of the Policy is to recommend that EPA use the full range of available techniques as appropriate for carrying out public involvement activities for specific issues and programs. In the section describing how EPA wishes to achieve the Policy's "What Are the Purposes, Goals and Objectives of This Policy?" is the following statement: *"Make every effort to **tailor** public involvement programs to the complexity and potential for controversy of the issue, the segments of the public affected, the time frame for decision making and the desired outcome."* The Policy also clearly states that it applies only to EPA, and not to states.

### **Provide Guidance on When to Use Different Methods**

#### Guild Law Center and Michigan Environmental Justice Coalition:

While the GLC and the MEJC appreciate that the EPA has thought about multiple methods of public consultation and involvement, we believe that the Draft Policy should include some parameters or suggestions for when each of these methods is appropriate. Without some guidance on when these more unusual consultation methods [ADR and advisory/technical assistance groups] are warranted, we are afraid that agency officials will simply rely on the more familiar methods of public hearings, meetings and listening sessions.

#### University of Calgary, Department of Economics:

I have a similar concern about the draft document's section 5. There, the Agency "lists" a wide variety of participation processes that may or may not be employed by the EPA, as the situation demands. But a list is not a policy. Section 5 does not provide a set of criteria that can be applied (either objectively or subjectively) to determine when, say, "information exchange" will be used and when "agreements" will be sought.

Failure to provide such criteria may create two types of problems. First, if administrators are not given detailed direction, there may be inconsistencies in application of the guidelines across regions or industries. Different procedures may be employed in two otherwise identical regions or industries leading to disaffection among potential participants. Second, if interest groups are not provided with clear guidelines, some groups' expectations concerning participation will not be realized. Again, these groups may become disaffected.

**Response to above two comments:** EPA agrees that the Policy should contain some recommendations for using the different public involvement methods listed in the Policy. EPA revised the "Conduct consultation" section of the Policy to include the purposes, common examples and some key recommended actions for each of the different methods.

### **Involve the Public at Early Strategy Phase and Throughout Decision Process**

International Association for Public Participation:

The overwhelming majority of the public wants to be informed and involved at the Big Picture or Strategy level. They want to be informed in plain language and be able to give their comments and concerns in plain language as well. This type of participation is more conversational, anticipatory, and policy-level. EPA and its delegated agencies should do more of it. In its public participation training, IAP2 presents a generic decision process that begins with a common definition of the problem, developing decision/evaluation criteria, developing options, and evaluation of alternatives. Talking with the public at these steps can be of immense value, rather than waiting for review and comment on a recommended solution.

**Response:** EPA agrees that in many cases the public wants to be informed and involved early, and that they want to be informed with and use plain language to express their ideas. The Policy recommends that EPA use such practices.

McNulty Group:

At the other end of the project, you need to start listening, at least informally, at the very beginning of a project. It is far easier, and far less work, to incorporate information and accommodate concerns early in a job – before endless hours are spent putting a concept down in words.

Citizen #10:

I firmly believe that your agency must plan early, well-advertised public comment sessions (accessible to all, of course) so that the public has input from the very beginning of the decision-making and program-forming process.

**Response to above two comments:** EPA agrees that the Agency should start communicating with the public early in the project. The Policy supports these suggestions, for instance in the "What Are the Purposes, Goals and Objectives of this Policy?" section: *"Reaffirm EPA's commitment to early and meaningful public involvement;"* and *"Promote the use of a wide variety of techniques to create early and, when appropriate, continuing opportunity for public involvement in Agency decisions."*

**Seek Balanced Stakeholder Input**

Idaho Cattle Association:

ICA believes the way to ensure public involvement at all levels of government and throughout the structure of EPA is to put into place a broad, encompassing, and well-balanced outreach program. One-sided input from groups and organizations with agendas can be destructive to the idea of public involvement. Unless EPA seeks input from all individuals and communities affected by the Agency's actions, public involvement may be rendered useless.

National Cattlemen's Beef Association:

NCBA believes the way to ensure public involvement at all levels of government and throughout the structure of EPA is to put into place a broad, encompassing, and well-balanced outreach program. One-sided input from groups and organizations with agendas can be destructive to the idea of public involvement. Unless EPA seeks input from all individuals and communities affected by the Agency's actions, public involvement may be rendered useless.

Washington State Department of Ecology, Toxics Cleanup Program:



Audiences are changing. Attendees are more likely to be representatives of organized groups and less an individual community member. How can we as agencies make sure we are hearing from all sides? It would seem to be timely to have EPA recognize and address this in their draft policy.

**Response to above three comments:** EPA agrees that it should obtain balanced stakeholder input. The Policy's opening introduction states, ***"EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions."*** The Policy also recommends the use of varied outreach methods in the section on "Provide information and outreach to the public." EPA will strive to address this issue in public involvement training for EPA staff.

#### Citizen #5

True public meetings include many members of the public, not just the private sector.

**Response:** EPA agrees that the Agency should ensure that the interested and affected public is invited to attend public meetings, and that the meetings should be planned and conducted in ways that facilitate their attendance and participation.

#### Sierra Club, Committee on Environmental Justice:

The Club must point out that reliance on representative public participation (task forces, advisory committees, focus groups and the like) either formal or informal must be done with caution. Legitimacy and accountability and balance for such groups are often questionable. In addition, community representatives are often the only lay persons serving on panels of experts, and their non-expert input is often discounted. But more importantly, such groups are rarely truly representative. It is absolutely essential, for example, that the affected community be represented. But perhaps just as important is that the full range of ideas that the public might bring to the table be represented as well. Tokenism is rampant in these types of representative public participation processes, and the guidance should be specific in condemning it.

**Response:** EPA agrees that when the Agency establishes advisory committees as part of the public involvement process, those committees should be balanced, represent a broad range of views, and include the affected community. The Policy suggests that various methods should be used to seek input and to gather the full range of ideas and interests to inform the decision-making process. The Policy's opening introduction states, ***"EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions."*** The Policy's "Identify the interested and affected public" section recommends a number of mechanisms to ensure that all points of view are represented and ways to find all sides. EPA does not agree that the "tokenism" issue raised in the comment should be addressed in the Policy, but it and other issues regarding representation of the public in advisory groups is intended to be addressed in public involvement training for EPA staff.

#### Citizen #58:

Public meetings do not work unless the issue is of such high import to the neighborhood that the meeting is highly charged and emotional to begin with. If not, you get the same "professional" activists that go to ALL of these meetings. They DO NOT represent the general public. The general public does not have time to bother with another community meeting. It is very low on our priority list. So most of the input comes from the full time activists - the squeaky wheels. They DO NOT represent us. I elect my local representatives - I do not elect my local activists.

**Response:** EPA appreciates the comment. The Policy recommends using a variety of public involvement techniques in order to obtain input from all affected and interested members of the public. Elected officials are among those who may participate.

McNulty Group:

One other point here: note the term "hearing from" above. If you are going to include something about reaching all affected parties, the statement should include the thought that it is not enough to afford an opportunity for affected parties to comment, the project manager must ensure all affected parties *\*are\** heard from, and understood.

**Response:** The Policy recommends using a variety of actions and methods in order to interest and involve the public in the "Identify the interested and affected public" section. EPA agrees that "reaching" and "hearing from" are not the same. However, if the people EPA reaches are not persuaded to participate, the Agency cannot press them for their input, nor should EPA question their decision not to participate. EPA will strive to address this issue in public involvement training for EPA staff.

### **Create EPA Public Ombudsman Position**

League of Women Voters of Michigan:

If the EPA is now to be "neutral", I think a sub-agency within the EPA needs to take on the mission of educating, listening and advocating for the groups about which you have particular concerns. It may be, therefore, that a somewhat out of date concept --the ombudsman --needs to be considered as the "front line" "person" for outreach & input. More specifically, the "front line" office, since such a role would need a number of people to help weigh the kind of personal interests which are the individual stories of the interested public as well as coordinate the representation of the individual's "best interests".

Environmental Defense:

Secondly, EPA should consider hiring ombudspersons to go between the community and government similar to EPA's Small Business Ombudsman, which has grown into an effective advocate and communication vehicle for small business interests, or USDA's Extension Service, which is a much valued resource at the local level.

**Response to above two comments:** These comments are outside of the scope of the Policy. However some of EPA's staff fill an ombudsman function when they are working on a Superfund or community-based project. EPA agrees that the small business ombudsman is a good model; however, EPA currently does not plan to create a new public ombudsperson position. This comment was provided to the EPA Office of Regulatory Management.

### **Technical and Outreach Staff Must Work Together**

Washington State Department of Ecology, Toxics Cleanup Program:

It's been several years since I've had opportunities to work with EPA on cleanup sites - so do not know if these continue to be issues. It's critical in the development of public involvement, that technical and community relation's staff work together, and that each work in the area they have expertise in. I have heard this as a problem from many organizations - public and private. Public involvement must be allowed to occur inside the agency as well as outside the agency for it to be successful. Public Involvement must be recognized as both the art and science that it is, included in the cleanup process as is required in the regulations, by staff that have expertise in

the field. .... A public involvement specialist would not be the best person to provide engineering leadership on a site - and an engineer is not the best person to provide public involvement leadership. Although this may seem obvious - the reality is sometimes different.

Miami University, Department of Communication:

I would encourage EPA to use technical personnel in workshops to explain technical issues. My experience has been that publics don't want to hear from the public information staff; they want to hear from people who "really know what they are talking about" (I've been told that directly). This tactic can do wonders to calm fears and reduce resistance. When a project engineer can say, "We considered what you're saying, but here's why we can't make that work," many people will accept it, even if reluctantly. Of course, this tactic does require technical personnel to be or become effective communicators.

**Response to above two comments:** EPA agrees that technical staff and public involvement staff should work cooperatively together. These comments show the value of having both types of experts working together in the outreach effort. They were shared with EPA's Superfund and Resource Conservation and Recovery Act programs.

**Techniques for Consulting with Environmental Justice Communities - Partner with Local Groups**

New York State Department of Health, Center for Environmental Health:

The draft Policy states that EPA should "consider the appropriate use of third parties in the development and implementation of programs...". We concur with this statement and have the following suggestions about third parties that may be helpful. In addition, the groups/entities listed below could also be helpful in #2 (Identify the interested and affected public) and #4 (Provide information and outreach to the public.).

- Work with local and statewide environmental justice groups. Our state has a statewide environmental justice advisory group. It probably would be helpful for regional staff to be involved with such groups. They would build relationships and have a better understanding of environmental justice issues in the region.
- Consult with bilingual community members and ask them to serve as translators at meetings or during other activities.
- Engage students (particularly college undergraduate or graduate level) from the community and ask them to follow the issue and give suggestions about the community's perspective. This could include talking with residents, gathering their opinions, and reporting back to the agency. This activity could be for credit or for pay.
- Hire a community person to listen and speak for the community or portion of the community. This takes the pressure off people who might want to be involved in the issue but may not be able to lose time from work.
- Although it often is necessary to work with activists representing minority, low-income and under served communities, the people who will be living with the program/project should be involved in the decision making process as much as the activists.
- Often people have "barriers" that prevent them from becoming involved. Some barriers are physical/time restrictions such as a lack of transportation or need for childcare. An idea of a way to overcome transportation issues is to hold the meeting or event near the people's homes (e.g. local school or church), or hold more than one session in different sections of the neighborhood. If childcare is an issue then hold meetings when children are in school or work with a church or a trusted civic group to provide childcare during the meeting. Some barriers come from

preconceived ideas; for example new immigrants that come from countries with repressive governments have a general fear of government. In general, barriers may be more prevalent among minority, low-income and under served populations and EPA should be aware from the beginning of a program/project if barriers exist and address them initially. Talk with community leaders and see if there are barriers that would prevent people from participating. Discuss suggestions for overcoming the barriers and building trust.

- Many people in minority, low-income and under served communities are not available during the traditional workday (9 AM – 5 PM) to go to the document repository, call agency staff, do site tours, etc. Staff should consider ways to make themselves and information about the program available outside the traditional workday.
- We have found the following techniques helpful in making a meeting between a minority/low income community and the State more productive:
- hold the meeting/event in a familiar, comfortable location (e.g. school, church);
- provide food;
- have presenters that represent different racial backgrounds; and
- structure the meeting so there are plenty of opportunities for open discussions with a question and answer component.

**Response:** These suggestions are useful and EPA intends to incorporate those that federal regulations and resources permit in public involvement training and a best practices data base for EPA staff. See new language added at the end of the Goals section: ***“Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement,”*** Also see in the methods portion of “Identify interested and affected public,” participating in the events of others and reaching the members of organizations through their publications.

### **Provide Public Involvement Training to EPA Staff**

#### New York State Department of Health, Center for Environmental Health:

The draft Policy calls for “guidance, resource and training” for technical staff. We would like to suggest that some of that training include public involvement topics, such as why public involvement is important, benefits of conducting public involvement and potential consequences of not doing public involvement. We concur that technical staff need fundamental public involvement training because they may be in a situation where they will have to do the public involvement.

**Response:** EPA agrees that public involvement training should include some of the general topics raised in the comment, and intends to include such topics in EPA public involvement training for technical staff.

#### New York State Department of Health, Center for Environmental Health:

Another topic for technical staff training is a session on how people normally react to environmental threats on their homes and some of the impacts this stress can have on the community, family dynamics and the health of the residents.

**Response:** EPA conducts staff training in Risk Communications and covers these topics.

#### Environmental Defense:

To improve its outreach activities, the Agency needs to work on the ground with stakeholders. EPA can use facilitators who are sensitive to the local needs and concerns and train employees to effectively communicate with stakeholders.

**Response:** EPA agrees that the Agency should work on the ground with stakeholders, particularly in site-specific activities, and that facilitators should be sensitive to local needs and concerns. In the "Who is responsible" section of the Policy, EPA recognizes the importance of training (new language in bold italics): ***"Managers should encourage and facilitate the proper training, support and counseling of staff, and, recognizing overall budgetary constraints, should plan for and provide adequate funding for training or other needs in their specific budgets."***

Environmental Defense:

There are three strategies that EPA can employ to improve its public outreach. First, it can train employees in public consultation and Alternative Dispute Resolution, like the Draft Policy proposes.

**Response:** EPA agrees that employee training is important. The EPA's recommendations for implementing the Policy stress training, and EPA will strive to include many suggestions provided in the public comments on the draft Policy in that training. EPA has a growing cadre of people trained in Alternative Dispute Resolution.

International Association for Public Participation:

In terms of specific techniques for identifying interested people and groups, providing technical assistance, providing information, and conducting public participation activities there are hundreds of pages and decades of experience available to the EPA and your colleagues. While the ideas delineated in your Draft Policy are admirable, we recommend that EPA conduct a comprehensive training program where particular techniques can be presented and discussed in context with your staff at headquarters, at the regions, and at the Tribes and states. In addition to the community relations staff who currently have responsibility for most public participation, we also recommend training for project and program staff, technical staff, senior decision makers, contracting officers and attorneys, restoration advisory boards and other regular participants. IAP2 offers a full complement of public participation training developed by the top practitioners in the field. This training includes the principles of public participation, public participation planning, communications for public participation, large group techniques and small group techniques.

**Response:** EPA will strive to include all the items listed in this comment in its public involvement training for EPA staff.

Doctoral Student, Washington State University, Department of Geography:

When describing who is responsible for ensuring that the policy is applied appropriately, it is stated that "managers should ensure personnel are properly trained." I agree but feel this should be expanded such that managers should also ensure they (i.e., themselves) are properly trained and the EPA should make sure they provide resources to their own staff to acquire self-recognized training. Even those of us who are already trained, can benefit from an annual refresher where new approaches to old problems are presented, as it is difficult for all of us to keep up to speed with everything we should.

**Response:** EPA agrees that managers also need public involvement training. The Agency's plans for public involvement training include training for managers as well as staff. EPA is also

developing a data base of public involvement best practices and training resources that should enable EPA staff to self-train without extensive classroom work.

National Association Of Home Builders:

EPA Staff Needs Training on Public Involvement Processes As Well As Technical Issues. EPA has itself identified major flaws in the manner in which its 1981 policy was implemented and carried out. It will do little good to adopt a new policy and then implement it in an equally deficient manner. EPA staff engaged in stakeholder and public involvement efforts require special training in public outreach, communication, and participation. Equally important, however, is the need for proper training in the technical and scientific issues under consideration by EPA. EPA staff should be sufficiently versed in the subject matter they are attempting to regulate so they can fully appreciate the complexity of the issues as well as scientific and technical information they must evaluate.

**Response:** EPA agrees that Agency staff would benefit from public involvement training. EPA's recommendations for implementing the Policy stress public involvement training for EPA staff. EPA also agrees that training in scientific and technical fields is important, although this is outside of the scope of this Policy.

Miami University, Department of Communication:

I would encourage EPA to use technical personnel in workshops to explain technical issues....Of course, this tactic does require technical personnel to be or become effective communicators. All agency staff should be trained in the principles and skills of public participation.

**Response:** EPA agrees that technical staff also need public involvement training, and the Agency plans to offer public involvement training for both technical staff and public involvement staff.

McNulty Group:

.... skip requirements for detailed written public involvement plans, etc. Instead, institute a traveling training program (which you can make mandatory) that is designed to convey the concept of public involvement supporting decision making rather than being decision making. (Making decisions in public, not the public making decisions.) Require the decision makers to participate in the training, and insist all others involved in the delegated project (deputies, managers, regulation writers, etc.) participate as well. You cannot demand they change the way they think or make decisions, but you can convince them to change. Here your goal is changing attitudes; probably won't happen in a single session.

**Response:** EPA agrees that many people at EPA should be participants in some form of public involvement training tailored to their particular responsibilities and functions. EPA will strive to ensure that training materials cover how public involvement supports EPA decision making.

## **PUBLIC HEARINGS/MEETINGS**

### **Oppose Public Hearings that Allow Only One-on-One Interaction**

Citizen #59:

Over the last few years, Federal agencies have adopted a public hearing format that discourages democracy and public participation. The new format forces citizens to talk one-on-one with government officials and submit written or oral comments individually more or less in private. The problem with this new format is that other citizens do not get to hear what other participants are saying. There isn't any give-and-take dialogue in a public forum or arena. A free exchange of information and opinion does not occur and thus no public consensus can develop. Please ensure that there be a public forum component of any public hearings held.

**Response:** EPA appreciates the comment, but does not conduct public hearings in the manner described in the comment. EPA hearings are open, advertised, and structured to encourage people to present their ideas. There are situations, however, in which EPA officials may meet with an individual to discuss specific issues. Such meetings generally are not open to the public; however, if matters pertinent to a docketed activity arise, notes of the meeting discussion should be made part of the appropriate docket and publicly available.

### **Ensure that Public Meetings Are Not Intimidating to Public**

#### Citizen #7:

How do you serve folks who understand issues, but are embarrassed to stand up in an open public meeting and voice their concerns?

**Response:** EPA appreciates the concern voiced in this comment. The Policy's "Conduct public consultation and involvement activities" section suggests a number of information exchange activities and mechanisms: (new language in bold italics): ***Interactive methods that provide participants with opportunities to discuss the issues and their input with the Agency through public meetings, listening sessions, workshops, availability sessions, open houses, interviews, focus groups or surveys, Internet-based dialogues and other methods (Note: Some of these types of exchange activities, including surveys and Internet dialogues, potentially are subject to provisions of the Paperwork Reduction Act and security and privacy constraints)***. EPA also encourages people to submit written comments by mail or via the Internet. This provides an avenue of communication for those who are uncomfortable speaking in a public meeting or hearing.

#### Golden Gate University and Environmental Law and Justice Clinic:

...consideration should be given to the fact that offering testimony at public hearings can be an intimidating experience. Therefore, in situations where public hearings are deemed to be the best forum for public comment, these should be set in a non-adversarial structure. For example, adverse parties should not be allowed to cross-examine public commenters. Also, the option of written testimony as opposed to oral testimony should be offered.

**Response:** EPA agrees that public hearings should be conducted in a non-adversarial manner, and generally encourages submitting written comments by mail or via the Internet as an alternative to speaking at a public hearing. Public hearings offer some opportunity for hearing officers and the audience to pose clarifying questions. Cross examination, although required to be allowed in some limited cases, should not be common practice.

### **Create Rules that Specify When Public Hearings Must be Held**

#### Citizen #5:

True public hearings should be held on all large or long-term actions... At the very least, clear rules on when EPA or the states have to hold a hearing need to be established because the

current threshold of "significant public interest" appears to be defined in a widely diverse manner. **Response:** EPA disagrees that new rules for public hearings are needed. Requirements for public hearings are specified in the environmental statutes or regulations, and EPA does not plan to create additional rules for public hearings as suggested.

### **Don't Hold Public Meetings Only at the End of the Process**

University of Maryland, Department of Communication:

Regarding public consultation and involvement activities, methods should avoid holding public meetings and public hearings at the end of the process. Despite the alternative and additional methods that EPA uses in the beginning and middle of the process, some citizens will not become aware until the decision nears - and becomes more relevant and salient to their lives - and they may perceive that the EPA has only held public meetings - and public meetings - especially the traditional, formal, public hearing - hold very negative images for the public, in terms of their not being truly legitimate or interactive forums of participation. The worst-case scenario is that it (the meeting) detracts from months (or years) of hard work on involving the public.

**Response:** EPA understands that people sometimes do not become involved until the process is about to end. In the goals section of the Policy please see: "*Make every effort to **tailor** public involvement programs **to** the complexity and potential for controversy **of** the issue, the segments of the public affected, the time frame for decision making and the desired outcome.*" See new language in the "Conduct public consultation and involvement activities" section under "a. Actions:" such as: "*Notify the public of potential consultation and involvement activities early enough to ensure that the public has adequate time to obtain and evaluate information; consult experts and formulate **and express** their opinions, options, and suggestions prior to Agency action.*"

### **Allow Public to Participate in Superfund Meetings**

ACES, Inc.:

We suggest a procedure and regulations to allow public representatives to attend all joint GP/PRP meetings, at minimum as observers, and hopefully as discussion participants.

**Response:** This comment is outside of the scope of the Policy, and was shared with the EPA Superfund Program.

## **PUBLIC MEETING LOGISTICS**

### **Schedule Meeting Dates and Times that are Convenient for the Participants**

Citizens #13-15, 17, 18, 20-22, 31, 38, 40-46, 48-50, 53, 54, 57 (same comment provided by 23 citizens via e-mail)

Meetings should be held at a time and day that accommodates working people.

American Water Works Association:

Clearly, for local issues such as a Superfund site, EPA should consider setting public hearings in the evenings or on weekends so that the affected public need not take time off from work. This can be accomplished through setting meeting times that do not conflict with work hours.

Citizen #10:



It goes without saying that sessions must be held when ordinary working people can make them and where ordinary working people can take public transportation to reach them.

Citizen #8:

The agency could schedule hearings on evenings &/or weekends, when the unempowered have whatever brief opportunities they may have to comment in person upon a question or 'problem.'

Southwest Workers Union:

Many can't afford to take the day off, so when you have public meetings and want input from average people, don't have them during working hours.

City of Austin, Texas, Water and Wastewater Utility:

Our experience has shown, that the EPA often chooses meeting days for its convenience, rather than the public's. The key to encouraging public involvement is to accommodate the public. For example, in scheduling stakeholder meetings, Mondays and Fridays are often off-limits because many rank and file EPA staff have compressed work schedules and are unwilling to come in on their days off. For the public, however, Mondays and Fridays are frequently the best times to participate since weekend days can be used for travel.

For issues that are clearly local, like a Superfund site, the EPA should consider setting public hearings in the evenings or on weekends so that the affected public need not take time off from work. This can be accomplished through setting meeting times that do not conflict with work hours. We have found this to be very effective in the scheduling of our own public hearings and public meetings.

American Water Works Association:

Our experience has shown that EPA often chooses meeting days for its convenience, rather than the public's. The key to encouraging public involvement is to accommodate the public rather than federal staff and their contractors.

**Response to above seven comments:** EPA agrees that public meeting dates and times should accommodate the interested and affected public. The Policy's "Conduct public consultation and involvement activities" section states: *"Conduct public consultation and involvement activities at times and places which, to the maximum extent feasible, facilitate attendance or involvement by the affected public. Whenever possible, public meetings concerning local facilities or sites should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation."* Particularly for local issues and decisions, EPA staff often plan and conduct evening and weekend meetings, attempting to better accommodate the public's needs. EPA will strive to include these issues in public involvement training for EPA staff.

Unitarian Universalist Fellowship, Falmouth, MA:

I hope that EPA staff people understand that, in today's America, different people are working on different schedules. There's no "best time" for public hearings. Some people - in particular, retired people and people who work at night - may prefer meetings during the day. Individuals with traditional nine-to-five work schedules may prefer evening hours for public hearings. Trying to squeeze all citizens into the same schedule will be almost impossible. Please be as flexible as possible.

**Response:** EPA agrees that Agency staff should assess each situation and remain flexible when scheduling meetings in order to enable the best participation from all segments of the

public. This may include scheduling more than one meeting at different times.

Southwest Workers Union:

With people's work schedules they can't attend daytime meetings... Working class people can't take off from work...

Minnesota Pollution Control Agency:

Also, many attendees don't qualify for federal air fare and hotel rates, so EPA should consider meeting in lower-cost areas and timing meetings to allow Saturday-stay discounts.

**Response to above two comments:** EPA agrees that recognizing and attempting to minimize participants' costs should be considered when determining when and where to hold meetings.

Bison Land Resource Center:

Another regional reality is weather. I cannot speak for people from other regions, but I know that in the northern Great Plains, travel may basically shut down for long portions of the winter. Out-of-town travel may be impossible, uncertain, or dangerous six months of the year, especially for the youngest and oldest drivers.

**Response:** EPA agrees that the Agency needs to recognize and accommodate weather, transportation and other important local conditions when planning public involvement activities. EPA will strive to include this issue in public involvement training materials and best practices information for EPA staff.

### **Schedule Public Meeting Locations that are Convenient for the Participants**

Citizen #11:

Meetings should be held locally in the affected areas so that members of the public who will be affected can attend.

American Water Works Association:

Additionally, EPA often chooses meeting locations for its convenience. EPA regulations have national impact and yet the majority of stakeholder meetings are held in Washington, DC, where EPA is headquartered. Again, to encourage public involvement, it must be convenient for the public. For national issues, we recommend that EPA hold stakeholder meetings and public hearings at various locations around the country.

Iowa Department of Natural Resources, Water Supply Section:

...it would be most helpful if EPA would hold more than one national meeting on a given rule. Or, if that is not possible, hold the meeting in a location that is centrally located in the country to reduce travel expenses, and hold it at such a time when winter weather is unlikely to hamper travel.

Washington State Department of Ecology, Toxics Cleanup Program:

It is also desirable to have meetings close to people affected by the potential decision. If a transborder issue exists, meeting should be scheduled in both states to accommodate the public rather than accommodating EPA's desire not to duplicate meeting information or travel.

**Response to above four comments:** EPA agrees that when possible, the Agency should conduct meetings in locations that are convenient for the interested and affected public. The Policy's "Conduct public consultation and involvement section" states: "*Conduct public*

*consultation and involvement activities at times and places which, to the maximum extent feasible, facilitate attendance or involvement by the affected public. Whenever possible, public meetings concerning local facilities or sites should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation."* The Agency often holds meetings in locations outside metropolitan Washington, DC to encourage input on national issues. EPA also is increasing its use of electronic submissions of comments. EPA will strive to include these issues in public involvement training materials for EPA staff.

Citizen #5:

The public must be able to attend public stakeholder meetings. EPA should provide significant advance notice of public stakeholder meetings, and should do its best to make sure the affected public is invited to the meeting. This includes advertising the meeting in public spaces (other than just the Federal Register notice), providing scholarships for the public to attend these meetings, and possibly holding meetings in "the field" as opposed to Headquarters or regional EPA offices.

**Response:** EPA agrees that the Agency should provide advance notice of meetings, effectively invite the affected public, advertise the meeting using methods beyond the Federal Register and consider holding meetings in or near the affected community. These recommendations are included in various sections of the Policy. However, legal limitations prevent EPA from providing direct financial assistance for attendance at public meetings. Where members of the public are asked to consult and provide advice directly to the Agency, the Policy's section on "Consider providing technical or financial assistance to facilitate involvement" recommends providing travel and per diem financial assistance if those members would otherwise be unable to participate.

### **Schedule EPA Meetings to Coincide with Other Conferences/Events**

American Water Works Association:

In the second column on Page 82340, the Policy mentions, as one of its goals, that it should "... ensure that information is provided at places easily accessible to interested and affected persons and organizations." To achieve broader participation from utilities, we recommend that the EPA schedule some of its public involvement activities concurrent with events like the American Water Works Association's Annual Conference, the Water Environment Federation's Technical Exposition and Conference, or other water conferences. Generally, stakeholders from all points of view attend these conferences and this will facilitate broad participation in EPA's outreach efforts.

City of Austin, Texas, Water and Wastewater Utility:

In the second column on Page 82340, the Policy mentions, as one of its goals, that it should "... ensure that information is provided at places easily accessible to interested and affected persons and organizations." To achieve broader participation from utilities, we recommend that the EPA schedule some of its public involvement activities concurrent with industry events like the American Water Works Association's Annual Conference, the Water Environment Federation's Technical Exposition and Conference, or other industry conferences. We typically have staff in attendance at these conferences and this will facilitate our participation, as well as that of others, in the EPA's outreach efforts.

**Response to above two comments:** EPA agrees that, when possible, the Agency should schedule meetings to coincide with major stakeholder events. The Policy's "Conduct public

consultation and involvement activities" section states: "*Conduct public consultation and involvement activities at times and places which, to the maximum extent feasible, facilitate attendance or involvement by the affected public.*" In addition, the Policy's "Provide information and outreach to the public" section recommends: "**Participation in conferences, workshops, meetings...**" This issue should be included in public involvement training materials for EPA staff.

### **Provide Child Care at Public Meetings**

Citizens #13-15, 17, 18, 20-22, 31, 38, 40-46, 48-50, 53, 54, 57 (same comment provided by 23 citizens via e-mail)

I want a public involvement policy with public comment sessions accessible to all (... child care).

**Response:** The Policy suggests: "*When possible, consult or involve the affected public to ensure that the approaches selected consider, and if appropriate, accommodate the potentially affected parties' needs, preferences, schedules and resources, as well as the Agency's needs.*" However, it should be noted that EPA cannot pay for child care for members of the public who attend public meetings. EPA will strive to include these issues in public involvement training materials for EPA staff.

### **Hold Public Meetings at Locations with Access to Public Transportation**

Citizens #13-15, 17, 18, 20-22, 31, 38, 40-46, 48-50, 53, 54, 57 (same comment provided by 23 citizens via e-mail)

I want a public involvement policy with public comment sessions accessible to all (public transportation...).

Citizen #10:

It goes without saying that sessions must be held when ordinary working people can make them and where ordinary working people can take public transportation to reach them.

Citizen #55:

Finally, as a user of public transportation, please make future meeting accessible via bus or train! The last time I attended a public meeting, it was in an area not accessible to public transportation. I ended up taking a bus to the closest location, then taking a taxi. It took me an hour to get there and cost me \$15!

Unitarian Universalist Fellowship, Falmouth, MA:

Access to hearings is a major concern. On at least two occasions in recent years, I've been invited to public hearings, relevant to public transportation planning, that weren't accessible by public transportation. Needless to say, this oversight seems a bit odd.

Southwest Workers Union:

Don't make it hard to make it here to meetings. More may be on the way.

**Response to above five comments:** EPA agrees that the Agency should conduct public meetings that are accessible to the affected public, which includes holding meetings at locations that are accessible to public transportation where possible. The Policy's "Conduct public consultation and involvement activities" section states: "*Conduct public consultation and*

*involvement activities at times and places which, to the maximum extent feasible, facilitate attendance or involvement by the affected public. Whenever possible, public meetings concerning local facilities or sites should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.”* EPA will strive to include this issue in public involvement training materials for EPA staff.

## **Provide Access to Meetings for Disabled Persons**

Citizens #13-15, 17, 18, 20-22, 31, 38, 40-46, 48-50, 53, 54, 57 (same comment provided by 23 citizens via e-mail)

I want a public involvement policy with public comment sessions accessible to all (...handicap access...).

Unitarian Universalist Fellowship, Falmouth, Massachusetts:

In a nation in which the average age is rising, it's important to remove some of the barriers that prevent persons with disabilities from participating in public hearings. Please check sound systems, in advance, to make certain that all speakers at public events can be heard. Please reduce the amount of "small print" in government publications so that important reports can be easily read. Make certain that auditoriums and rooms for public hearings are easily accessible for people in wheelchairs. Try to provide adequate seating and ventilation in the places where hearings are being held. Please make certain that restrooms are accessible. (Participation in a public hearing shouldn't be a physical ordeal.)

New York State Department of Health, Center for Environmental Health:

Ensure that public meetings are in "handicapped accessible buildings". Consider having at the meeting speaker phones, cable public access and interactive Internet programs to help the handicapped.

**Response to above three comments:** EPA complies with the Rehabilitation Act and provides access to meetings to all participants. EPA has added new language in the "Conduct public consultation and involvement" section of the Policy regarding EPA's efforts to provide access to people with disabilities (see new bullet at the end of 5a): ***“Be knowledgeable of and comply with provisions of the Rehabilitation Act regarding appropriate accommodations for individuals who need special assistance in attending public hearings, meetings or other events.”*** EPA intends to include this issue in public involvement training materials for EPA staff.

## **OTHER INFORMATION SHARING METHODS**

### **Need Alternatives to Public Meetings for Getting Input from Busy Public**

Citizen #7:

It seems that whenever you have a public hearing of one sort or another, those who choose to attend are those with two to five hours to spare. I don't know about you, but my time is precious. The only way I would commit an hour or more to one of your meetings is if I felt very strongly about the subject. Is there a way to allow common citizens who are very, very, very busy, to take five minutes or ten minutes of their otherwise very busy days and quickly comment on EPA issues as opposed to taking two hours to attend one of your meetings? Can you make it easier for me to comment on subjects X, Y and Z? Are there Internet or e-mail based methods of gathering public comment? Can you make it easier for the common citizen to comment?

**Response:** EPA recognizes that many interested individuals also are very busy. The Policy encourages the use of public involvement processes, such as e-mail and the Internet, that allow individuals to provide input without attending traditional meetings. EPA is planning to use Internet-based methods more broadly, in addition to traditional public involvement methods.

### **EPA Staff Should Go on Field Visits**

#### National Farm\*A\*Syst Program:

Another form of outreach I suggest for inclusion (under either 4. or 5.) is "field trips" for EPA personnel. There is nothing like getting out in the field to see, meet, learn about the people, natural areas, and phenomena that EPA is trying to affect. Of course these have to be carefully structured to avoid undue influence in one direction or another. But I've learned there is no substitute for experiencing a situation directly, or for informal dialogue with stakeholders. One way to do this would be to invite opposing interest groups to organize their own field visits for the same EPA personnel at different times. Many private foundation funders find it very valuable to make site visits that put them in touch with actual constituents or beneficiaries of programs they fund. Such interactions not only gather information, they also assimilate and provide feedback on that information (item #6).

**Response:** EPA agrees that Agency staff and the concerned public can benefit from site visits. See new language in the "Provide information and outreach to the public" section of the Policy under 4b Methods (new language in bold italics): ***"Tours of relevant sites and facilities"***.

### **Conduct Surveys and Focus Groups for Public Input**

#### American Water Works Association:

Innovative options for public involvement such as surveys and focus groups were not mentioned in the Policy.

**Response:** EPA disagrees; the Policy encourages the use of innovative options for public involvement. Specifically, these methods are recommended in the Policy under section 2 "Identify the interested and affected public," section 4 "Provide information and outreach to the public" part b Methods, and section 5 "Conduct public consultation and involvement activities" part b Methods.

#### City of Austin, Texas, Water and Wastewater Utility:

Innovative options for public involvement, that were not mentioned in the Policy, are surveys and focus groups. An advocacy group's claim to represent the public, is often taken at face value. In fact, advocacy groups may have more extreme views than the public at large. Surveys and focus groups are an opportunity for the EPA to contact the public, in a neutral and controlled forum, to ascertain their opinions on environmental matters. The Social Security Administration has used focus groups successful for a number of years and we encourage the EPA to model their survey and focus group efforts after the Social Security Administration's.

**Response:** See above response. EPA appreciates this information and since 1996 has used the work of the Social Security Administration as resource material when developing EPA's customer satisfaction and focus group survey instruments.

#### Citizen #58:

Do a random sample interview process of the general public. Offer them something for this -

focus group style - tickets to a local water park or some such thing. This will give you a more honest viewpoint than a public meeting. Be creative - Get Out of The Box. Come and talk to us - like you, we're busy - but we do care.

**Response:** Surveys and focus groups are among the techniques recommended in the Policy. Generally, Federal appropriations law may preclude agencies from providing "give-aways" as suggested, but agencies may provide reasonable incentives for participation in surveys and focus groups in appropriate cases if funds are legally available for that purpose. Further, the policy does encourage the use of creative techniques for expanding participation. It should be noted that the Paperwork Reduction Act limits the use of surveys.

## **RECOMMENDATIONS - ADVISORY COMMITTEES**

### **Distinguish Military-Convended Advisory Boards from EPA Advisory Boards**

Washington State Department of Ecology, Toxics Cleanup Program:

Restoration Advisory Boards for Federal Facilities are called together by the federal facility - usually with EPA and the state the Federal Facility resides in. The Federal Facility is required to follow the IRP (Installation Restoration Plan), which requires it to follow CERCLA. It seems these advisory boards may not be required to follow the same guidelines as other advisory boards since the lead agency is the military. However it's not clear. Is it worth noting that advisory boards that provide advice to EPA but are not called together primarily by EPA exist and are beyond the scope of the requirements for Federal EPA Advisory Committees?

**Response:** The Federal Advisory Committee Act (FACA) applies to any group established or utilized by the Federal government to obtain advice and recommendations, regardless of which federal agency is the lead agency. It is the responsibility of the lead agency to determine whether FACA applies to the group. EPA intends to ensure that any group providing EPA with advice and recommendations does so in compliance with FACA.

### **EPA Should Support Evaluation of The Federal Advisory Committee Act**

International Association for Public Participation:

The Federal Advisory Committee Act (FACA) was enacted with good intentions, but it has proved incomplete as a guide to balancing input, dialogue, participation, accountability, openness, technical analysis, and quality decision making. IAP2 is working with the National Academy for Public Administration to evaluate FACA and recommend amendments to the Congress that will enhance the implementation of the Act for all parties. EPA support in this effort would be welcomed.

**Response:** Changes to the Federal Advisory Committee Act fall outside of the scope of the Policy. This comment has been shared with EPA's Office of Cooperative Environmental Management, which oversees EPA's FACA committees.

### **Support for Federal Advisory Committees**

The Groundwater Foundation:

Specifically, we would like to commend the agency for renewing its commitment to the Federal Advisory Committee structure and process. I know that my participation on FACA groups has brought increased depth and effectiveness to Groundwater Foundation programs. One of the greatest benefits is from the relationships this participation builds. These relationships continue to inform and improve our work even after the formal committee work or terms of service are

complete.

**Response:** EPA appreciates this comment, and agrees that FACA committees are beneficial in many ways. The Policy recognizes the role of FACAs in the Methods section of Consultation: *"...EPA should work to maximize the use of existing institutional resources as vehicles for consultation and involvement processes. The more than twenty EPA Federal Advisory Committees are such an institutional resource. EPA established each of them to provide advice on a different aspect of environmental policy or management. These committees are part of the Executive Branch decision-making process and include members who are scientists, public health officials, businessmen, private citizens, and officials at all levels of government. Approximately 1,400 citizens sit on FACA committees, bringing a variety of perspectives and expertise to the environmental consensus building process."*

### **Support for Advisory Groups with Financial Assistance from EPA**

Guild Law Center and Michigan Environmental Justice Coalition:

On the other hand, creation of a citizen advisory group or technical assistance group, particularly where financial assistance is available to purchase or develop expertise on the issue under consideration, can be a powerful tool for a previously unorganized area or an environmental justice community.

**Response:** EPA agrees that advisory groups that are given assistance and that develop expertise can be very effective. The Policy's section on "Consider providing technical or financial assistance" supports this suggestion.

### **Support for Additional Small Business Panels, Beyond Requirements**

U.S. House of Representatives, Committee on Small Business (Rep. Manzullo):

The Small Business Regulatory Enforcement Fairness Act's panel process provides an already existing tool to obtain small entity input. I strongly urge that EPA modify its public participation policy by voluntarily utilizing the panel process even if the agency determines that it is not directly regulating small entities. EPA voluntarily should ignore the D.C. Circuit rulings that approve its certification of regulations that only affect states. Instead, EPA should assume that such regulations will have a significant economic impact on a substantial number of small entities, perform an initial regulatory flexibility analysis, and convene a panel to obtain the input of potentially affected small entities.

**Response:** EPA appreciates the comment, but does not agree that it should expand the use of the Small Business Advocacy Review Panel (the Panel) process to obtain small entity input on rules not subject to the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Over the history of the SBREFA program EPA has convened roughly five Panels a year. In some cases, the Agency could have certified the rule as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA) but chose to convene a Panel because certain characteristics of the rule rendered the Panel procedure advisable as a matter of policy judgment. To avoid unnecessary delay and expense, EPA reserves the use of Panels to those relatively few cases in which they are either required by the RFA, or similarly advisable for policy reasons. To supplement the Panel process, EPA manages its rulemaking procedures under the so-called "Any/Any" policy, which calls for outreach regarding the analysis of small-business issues in any rule that imposes any burden on small businesses subject to the rule. EPA believes this policy encourages reasonable flexibility for small businesses, while reserving the full Panel process for



those few rules that warrant the substantial time and expense required to plan and support the Panel process.

The comment also suggests that EPA "should ignore" D.C. Circuit rulings upholding EPA certifications of rules that do not directly impose any regulatory requirements on small entities. EPA does not believe that it would be appropriate to ignore these rulings. Regulations issued pursuant to the Clean Air Act require the States to fashion regulatory programs that will meet ambient air standards rather than impose requirements on small entities. Given that these rules do not establish requirements applicable to small entities, they do not afford an opportunity for EPA to consider or fashion regulatory alternatives for small entities. Notwithstanding these difficulties and consistent with EPA's policy to minimize burdens on small entities to the extent feasible, EPA has attempted to address potential small entity concerns in the context of these rules by working with small entity representatives and States to provide information and guidance on how States could address small entity concerns. For example, EPA convened outreach meetings modeled on the Panel process to solicit small entities' concerns with EPA's proposed standards and to convey those concerns to the States. EPA also has undertaken a number of activities to encourage States to be sensitive to small entity impacts as they develop and implement their regulatory programs.

## **FACILITATORS/ ALTERNATIVE DISPUTE RESOLUTION**

### **Use Neutral Facilitators**

Harvey M. Sheldon, P.C.:

I do think the Policy should explicitly indicate that EPA will undertake the use of neutral facilitators on specific projects where there may be benefit from attempting to define and refine the concerns of various constituencies on an issue early on. The result could be a specific suggestion to the EPA of a preferred approach or regulation that respects the needs of a diverse public, including, e.g. business, local government, environmental justice and the environmental action communities. Without such an affirmative program to facilitate development of ideas, EPA will too often be left with the strictures of "notice and comment" procedures...and the better mousetrap will never be invented.

**Response:** The "Conduct public consultation and involvement activities" section of the Policy recommends the use of neutral facilitators or third parties (new language in bold italics): *"Consider the appropriate use of third parties (**neutral facilitators or mediators**) in the development and implementation of programs, projects and activities."* This section of the Policy also discusses the use of facilitation and Alternative Dispute Resolution, ***"Facilitation and Alternative Dispute Resolution (ADR) are tools that the Agency may use to convene and conduct activities or to seek to resolve differences among various stakeholders during information exchange and collaborative processes. For ADR, EPA obtains the services of neutral, trained facilitators and mediators who manage discussions between the Agency and a set of well defined stakeholders. ADR is most effective when there are a few highly involved and informed stakeholder groups who agree to participate in a dialogue through which they raise their concerns and seek to resolve a particular issue by consensus."*** Groups that EPA establishes or utilizes to obtain advice and recommendations are subject to the Federal Advisory Committee Act requirements.

### **Recommend Appropriate Use of Alternative Dispute Resolution**

Sierra Club, Committee on Environmental Justice:

Finally, the Club's other specific comments within this section must include a simple suggestion that ADR should not be a substitute for serious scrutiny and judicial review.

**Response:** The Policy does not consider Alternative Dispute Resolution as a substitute for serious scrutiny and judicial review. In all cases EPA should follow standard administrative procedures through which decisions are subjected to scrutiny by the Agency and the public, and decisions are still potentially subject to judicial review.

Guild Law Center and Michigan Environmental Justice Coalition:

For example, alternative dispute resolution ("ADR") may be appropriate where the agency is considering issuing a permit or approving a remediation plan in a community that is active and has already organized itself around and informed itself about the proposed action; ADR would not be appropriate where the community has only recently learned of the environmental issue being considered, is split on the appropriate resolution of the issue or is simply not organized.

**Response:** EPA agrees the Agency should use alternative dispute resolution only in appropriate situations, and will strive to include such considerations in public involvement training for EPA staff.

### **Support Use of Alternative Dispute Resolution**

St. Regis Mohawk Tribe, Environment Division:

One of the more important tools included in the draft policy was ADR. In my experience, ADR can create and maintain a dialogue between parties who disagree on a controversial issue. It can also cut down on courts costs and be a quicker instrument in reaching consensus, or at the least, understanding of the other sides' perspectives.

**Response:** EPA agrees that the use of alternative dispute resolution can promote dialogue and understanding, reduce court costs and result in general agreement.

### **Don't Overemphasize Alternative Dispute Resolution**

Wisconsin Department of Natural Resources:

...under Methods (p. 82341-82342), why has EPA put alternative dispute resolution (ADR) up front? Public involvement strives to avoid entrenched disputes through early involvement of all interests. ADR is one method of getting to agreements and should appear in the list of agreement activities (bottom of column one on p. 82342) as one consultation technique as opposed to being highlighted in the beginning of the methods discussion.

International Association for Public Participation:

We are perplexed that your discussion of public consultation and involvement methods begins with Alternative Dispute Resolution. While ADR and its techniques can be useful in policy development or conflict resolution, it is not the same as public participation nor is it sufficient. In fact, many processes such as regulatory negotiation and policy dialogues, while extremely valuable in the right context, do not normally involve "the public" at all. They are representative collaborative processes that are seldom utilized. (Many would argue that they should be used more!) The placement of the paragraph on ADR in your Policy should be changed in recognition that it is a policy about public participation, not ADR.

**Response to above two comments:** EPA agrees, and changed that section of the Policy to indicate that ADR is clearly one tool among many that EPA may use.

### **AGREEMENT - CONSENSUS DECISION MAKING**

## Use Existing Consensus-Based Projects as Public Involvement Baseline

### Environmental Defense:

Consensus-building is more likely to occur in local projects because all the sectors and stakeholders can feel the direct impacts of the decision and outcomes. EPA should look at its existing consensus-based projects, which can be used as a baseline for developing public participation activities.

**Response:** Such a baseline study is outlined in EPA's evaluation strategy presented in the Agency's Framework for Implementing EPA's Public Involvement Policy, released in conjunction with the Policy. See <http://www.epa.gov/publicinvolvement/framework.pdf> to view the document.

## Clarify Binding Nature of Consensus Agreements

### Sierra Club, Committee on Environmental Justice:

Some governmental stakeholder processes move towards achieving consensus and the agreements made among the stakeholders at the table may produce binding interim guidance, final guidance, or draft rules or regulations to be proposed by the agency for formal adoption as long as they conform with statutory requirements. The binding nature of the negotiated agreements made at the table must be clear to all participants.

**Response:** The operating ground rules of Negotiated Rulemaking Committees and Policy Dialogue Committees have a section which discusses (1) the way decisions will be made (consensus, voting etc), and (2) the promises (if any) that EPA makes with regard to use of the results of the negotiation, (3) the promises (if any) that the outside public members make with regard to support of the results of the negotiation (what the agency expects of the parties to the negotiation with regard to signing an agreement, with regard to commenting on a regulation or filing lawsuits on a regulation.) For a discussion of groundrules, see "Best Practices for Government Agencies: Guidelines for Using Collaborative Agreement-Seeking Processes," 1997, Association for Conflict Resolution, Washington, DC. (Appendix 3) (now available on their website at <http://www.acresolution.org/research.nsf/articles/83896A1F61068A6B85256B73005D9954> .

Facilitators and agency representatives at the table discuss what is and is not possible. All of the members of the committee discuss and approve the ground rules before starting the negotiations. It is not unusual for members of a committee to seek clarification of the ground rules as the committee approaches completion of its work.

The Policy's "Conduct public consultation and involvement activities" section recommends that EPA clarify the following (new language shown in bold italics): *"Agency officials should clearly identify the issues **for discussion, negotiation or decision** prior to and **during a public involvement** process, so that **participants understand on which issues they should comment**. EPA officials should describe clearly the type of **public involvement** process **planned**, the schedule, EPA's expectations for the outcomes of the process **and the timing and type of feedback that EPA will provide.**"* If possible, the public should be involved in determining the design of the processes." In step 5, Consultation, the Policy states under the purposes of Agreement processes: *"**To reach a mutually acceptable decision between EPA and selected stakeholder representatives, in a written agreement. In some cases, such agreements are not legally enforceable, but do represent a good faith commitment by EPA and the other parties.**"*

## **Support Collaborative Methods for Land Use Decisions**

### Michigan Environmental Council:

Especially in the area of land use decision making, we feel that the agency should adopt more collaborative methods for securing public input. Citizens should be directly involved in evaluating the problems as well as formulating creative solutions. This should reach beyond traditional hearings and meetings, providing competing interests - for example developers and environmentalists - the opportunity to deepen their mutual understanding. Often collaborative methods result in win-win solutions where the interests of each party are substantively addressed.

**Response:** EPA agrees that collaborative methods can be very effective, and the Policy supports these ideas.

## **Science in Decisions and Peer Review**

### Idaho Cattle Association:

ICA supports decisions based upon sound science and not a "one size fits all" approach to implementing regulations.

### National Cattlemen's Beef Association:

NCBA supports decisions based upon sound science and not a "one size fits all" approach to implementing regulations.

### American Chemistry Council:

Consideration of Scientific Information. In EPA's September 2000 Strategic Plan, the Agency notes: "Science is the foundation that supports all of EPA's work, providing us with knowledge and technologies to detect, abate, and avoid environmental problems."(p7) As the Agency increasingly relies on science as the foundation of its decisions, the question of how best to make sure science is sufficiently represented in stakeholder processes has emerged as a vital issue. Recognizing this fact, EPA's Science Advisory Board (SAB) last year initiated an evaluation of how best to promote "a full and careful consideration of all available science" in stakeholder-based environmental decisions. We strongly urge EPA to address in the draft policy the need for assuring the use of scientific information, underscoring the fundamental place of science in EPA decision making.

As noted by the SAB in its Oct. 7, 1999, letter to then-Administrator Carol Browner, the concept of the general public interest "lies at the heart of many of our most cherished democratic institutions," and the Agency would best serve this interest when it carefully considers all available science as well as addressing stakeholder needs and interests. We strongly second this SAB position, and urge the Office of Policy, Economics, and Innovation to incorporate both the Oct. 7 letter and any SAB findings on the subject in its final policy. The Public Involvement Policy should clearly describe the importance of credible scientific information in Agency deliberations and provide the best guidance possible on how to ensure that such science plays an appropriate role in stakeholder involvement processes.

The Council fully understands that uncertainty will always be part of the scientific process and that science alone cannot provide definitive, unambiguous answers to the complex decisions EPA faces. Nevertheless, as the Agency itself has indicated in its Strategic Plan, and as Congress has recognized in numerous environmental statutes, scientific information is an indispensable foundation for defining environmental problems and crafting effective solutions. Scientific uncertainty cannot be eliminated from many Agency decisions, but it should not be an

excuse either for needless delays in addressing real problems or for overly hasty (as well as costly and misdirected) regulatory actions motivated by what former EPA Administrator William Reilly characterized as a "Ready, Fire, Aim" mentality. Addressing scientific uncertainty, and diligently working to reduce it through research and the use of all available data, must be a central component of Agency decision making. Informing stakeholders as accurately as possible about what the Agency knows, does not know, and assumes in the face of limited data must be central to its public outreach efforts... The Agency must strictly adhere to a policy of using the best available science in its decision making. Science reflects society's best understanding of how the world is – not how some wish it to be.

**Response to above three comments:** The Public Involvement Policy is not the appropriate vehicle for addressing the Agency's use of sound science in its deliberations. However, EPA agrees public participants should have full access to and understanding of the relevant scientific issues that are integral to EPA's decision making. Please see the following new language in the Policy (in bold italics):

1. In the "Plan and budget for public involvement" section: ***"Opportunities that help participants gain an adequate understanding of relevant scientific, financial and technical information relevant to the decision"***.
2. In the section on "Provide information and outreach to the public: ***"To the extent practicable, develop information and educational programs so that all levels of government and the public have an opportunity to become familiar with the issues, technical data and relevant science behind the issues"***.
3. In the section on "Conduct public consultation and involvement activities: ***"Provide guidance, resources, training, and professional assistance to Agency staff and interested delegated program partners, when feasible, to assist them in conducting or participating in public consultation and involvement activities in an effective and credible manner. This includes providing the technical, scientific, and background information in a manner that allows the involved public to understand the relevant science for the issues under discussion"***.

#### Consultants in Toxicology, Risk Assessment and Product Safety:

EPA needs to decide whether the external scientific community is part of the "public" and what role the external scientific community should play in developing science-based regulations and policies.

Unless EPA wants to pretend that Agency scientists can credibly review their own work products, external peer review of these products seems advisable. EPA occasionally uses its own Science Advisory Board (SAB) or panels of the National Research Council to obtain peer reviews, while independently soliciting public comments. CTRAPS agrees that this practice is worthwhile. Some consider it essential. (See the National Environmental Policy Institute's Enhancing the Quality of Science in the Regulatory Process, 1998 and Enhancing the Integrity and Transparency of Science in the Regulatory Process, 1996). More recently, EPA has extensively used Agency funded, contractor-run peer reviews. CTRAPS disagrees that these Agency funded, contractor-run peer reviews are worthwhile. In particular, these reviews are poor substitutes for SAB reviews.

Problems remain, even with Agency organized and controlled peer reviews, namely that EPA controls the selection of the SAB or National Research Council experts who participate, either directly or indirectly. Other scientists, who EPA does not want on its panels, still have opportunities to comment on the same scientific support documents, when EPA allows for public comments. Even so, if a National Research Council or an Agency funded, contractor-run peer review does not allow for public participation, public observation, and public access to the documents used in the reviews, external scientists who seek to use the public comment

process will face an impediment.

While EPA controlled peer reviews are worthwhile, limiting external comments to selected, if highly credentialed, experts seems questionable. So, the Agency should open the review process to any scientist wishing to comment. To do so effectively, EPA needs to develop better ways to notify the scientific community. Few scientists read the Federal Register. While publication there does discharge a legal obligation, the Agency should develop additional communication channels through widely read scientific journals.

EPA's peer review process has improved since the 1981 Public Participation Policy. Since June 7, 1994, EPA has had a formal Peer Review Policy, by which Administrator Browner required peer reviews of all scientific work products related to major decisions. In response to Congressional and General Accounting Office prodding, the Agency has extended peer reviews of scientific work products to programs that previously did not understand this process or its desirability. [See General Accounting Office, Federal Advisory Committee Act: Views of Committee Members and Agencies on Federal Advisory Committee Issues. (GAO/GGD-98-147) Washington, DC (1998)]. EPA officials less frequently confuse notice and comment with scientific peer review. The Office of Research and Development (ORD) now provides a mechanism for Agency-wide coordination, oversight and planning of peer reviews. ORD's Science Policy Council has generated a Peer Review Handbook, which provides guidance to Agency officials...

EPA needs to decide whether meetings with external scientific experts for purposes of soliciting advice (peer reviews) fall within the scope of the Federal Advisory Committee Act (FACA) and whether FACA meetings improve public participation. If so, the Agency needs to seek reversal of a Clinton administration policy that limited the number of FACA meetings each year...

Both President Bush and Administrator Whitman have recently called for more emphasis on sound science in federal regulations and policies. CTRAPS strongly supports this call. [See Daniel M. Byrd and C. Richard Cothorn, Introduction to Risk Analysis: A Systematic Approach to Science-Based Decision Making. (ISBN 0-86587-696-7) Government Institutes, Dallas, TX (2000)]. However, for it to succeed, EPA must engage the external scientific community through the public comment process, apply FACA to meetings with external scientists, and use normative scientific procedures of peer review and communication. In particular, EPA staff must explain to President Bush and Administrator Whitman that they need to overturn Clinton administration policies to improve participation of the external scientific community in peer reviews...

**Response:** Comments relating to the use of sound science and peer review are outside of the scope of the Policy except as noted in the previous response. These comments were shared with the Science Advisory Board, the EPA Office of Research and Development, and the EPA Office of Ground Water and Drinking Water. The Policy's definition of "the public" includes scientific and professional representatives and societies; as well as research, university, education, and governmental organizations and associations. As also noted in the Policy's "Identify the interested and affected public" section, EPA uses mailing lists of interested members of the public as a means of reaching people and supplementing Federal Register notices.

American Chemistry Council:

As a related matter, we believe that EPA must ensure the integrity of the scientific peer review process as a function that is distinct from stakeholder involvement processes. As the name suggests, peer review is a process whereby those with technical expertise critique the technical soundness of scientific analysis and conclusions. While public comments are an established

part of scientific advisory board deliberations, the technical quality of comments and review is the focus of scientific peer review and should remain so. Council members were disturbed by a Nov. 1-2, 2000, SAB meeting during which activist stakeholders sought to intimidate dioxin peer review panelists by taking their photographs and holding up accusatory signs when panelists tried to speak. While some might characterize this incident as a "mild disturbance" brought on by a stakeholder group exercising its right to protest, the Council regards it as an inappropriate attempt to intimidate and disrupt scientists conducting peer review. A sound public involvement process must ensure that all participants can make their case without intimidation, and a sound peer review process must ensure that science – not the protest activities of ideologues – is the final arbiter of whether a scientific conclusion is technically well-founded or not. Whether in a stakeholder process or a peer review process, basic ground rules of respect for others' rights to express their views must be observed, and those ground rules should be explicitly articulated in the Agency's draft policy.

**Response:** The peer review process is not within the scope of the Policy. EPA, however, agrees that during any public participation process participants should be able to state their concerns, views, etc. without intimidation. The Policy supports this position and encourages EPA staff to develop and use procedures that allow everyone an equal opportunity to participate. See the above two responses.

## **Improve Data Quality/Implement New Requirements**

### National Association Of Home Builders:

In addition, NAHB recommends that EPA endeavor to make data more accessible to the public at large. For example, EPA should ensure that highly technical data are presented in understandable form so that the broadest possible public involvement in regulatory decision making is allowed. Impediments to data access such as the inadequate explanation of background and technical materials, inadequate meeting summaries, and overwhelming amounts of reading materials should also be minimized in order to maximize public participation and reduce frustration in the process.

### National Association Of Home Builders:

EPA Must Ensure Data Quality, Access, and Credibility. Data quality, access, and credibility are the cornerstones of public trust for EPA actions, and no amount of public involvement will overcome a perception that a given regulation is based on deficient science or faulty technical analysis. Congress recently enacted a new data quality law that will bolster the Paperwork Reduction Act of 1995 by adding new data quality requirements on EPA. Under the new data quality provisions, EPA will be required to promulgate regulations that define data "quality," "objectivity," "utility," and "integrity" as well to set thresholds on how information can be used and disseminated. NAHB believes this new data quality requirement will have a significant impact on public participation and recommends that EPA takes this upcoming process very seriously. NAHB believes this will be a significant opportunity to improve regulatory process and instill confidence in the credibility of data being used as the foundation of governmental regulation.

**Response to above two comments:** EPA agrees with the commenter's assertion that there is a relationship between public participation and information quality. EPA recently finalized Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of

Information Disseminated by the Environmental Protection Agency  
<http://www.epa.gov/oei/qualityguidelines/>. The Guidelines articulate the Agency's policy and procedural guidance for ensuring quality and hearing from the public about the quality of information disseminated by EPA.

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## 10. FUNCTION (NOW STEP) 6. REVIEW AND USE INPUT, AND PROVIDE FEEDBACK TO THE PUBLIC

### WEIGHT GIVEN TO STAKEHOLDER INPUT Public Should be Equal Stakeholder in Decisions

#### ACES, Inc.:

The importance of including the public as an equal stockholder in discussing environmental matters is not only fundamentally sound, but vital to obtaining satisfactory and common-sense solutions.

#### CLEANUP:

The only technique we would recommend to create public involvement in agency decisions is; to treat concerned citizens with as much respect and interest as EPA gives a polluting entity.

#### Association of State Drinking Water Administrators:

Some stakeholder groups may not reflect the interests of the public at large. Their agendas for change may advocate a much narrower perspective. The Federal program for public involvement seems to provide these groups with a disproportionate voice in the development of new regulations.

#### Environmental Defense:

The Agency needs to ensure that it pays equal attention to all comments, and not to let only the loudest or best connected interests guide its decisions.

**Response to above four comments:** EPA agrees that public input is vitally important to good decision making, and the Policy supports fairness and equal access. The "What Are the Purposes, Goals and Objectives of This Policy" section of the Policy states: *"foster, to the extent possible, equal and open access to the regulatory process for all interested and affected parties"* and strive to: **identify, communicate with and listen to all affected sectors of the public** (Agency officials **should** plan and conduct public involvement activities that provide equal opportunity for all individuals and groups to be heard". One overarching goal of the Policy is: *"To foster a spirit of mutual trust, confidence, and openness between the Agency and the public."* EPA intends to reinforce this issue in public involvement training for EPA staff.

### Give Greater Weight to State Input

#### Association of State Drinking Water Administrators:

ASDWA recommends that the proposed policy expand on the definition of "public" to reflect the unique role of state governments and to correct the missperception that state input into the regulatory decision making process carries no greater weight or value than other interested parties.

**Response:** EPA agrees that the Policy needs to clarify the role of state governments and their



input into the regulatory decision-making process. See new language in "What are the Roles of States, Tribes and Local Governments?" This section states: ***"State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions: 1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities. 2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders. 3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions."***

### **Give Greater Weight to Environmental and Public Health Advocates' Input**

Golden Gate University, Environmental Law and Justice Clinic:

Therefore it would seem that those members of the public that are advocating on behalf of the environment and public health concerns, should receive increased deference, even as the EPA "remain[s] open to all points of view."

**Response:** EPA disagrees. The Policy promotes equal access and opportunity for involvement. For instance, in the "What Are the Purposes, Goals and Objectives of the Policy?" section, the Policy states: *"foster, to the extent possible, equal and open access to the regulatory process for all interested and affected parties"* and strive to: ***identify, communicate with and listen to all affected sectors of the public*** (Agency officials ***should*** plan and conduct public involvement activities that provide equal opportunity for all individuals and groups to be heard".

### **Give Appropriate Weight to Trade Associations' Input**

Idaho Cattle Association:

The Agency should give appropriate weight to comments from trade associations like ICA and NCBA that represent affected individuals.

**Response:** EPA agrees that all comments should be given appropriate consideration. However, EPA does not believe that more weight should be given to comments of particular groups.

## **FEEDBACK TO PARTICIPANTS**

### **Explain EPA's Final Decisions to Commenters**

Los Angeles County Sanitation District:

In particular we believe that a follow-up conference call should be scheduled by the staff or EPA

consultants in the situation where detailed comment letters have been prepared. During this conference call, EPA should state the issue as they believe it is framed in the comment letter and then describe the agency's logic in developing decisions, explaining the effect the comments had on the Agency's decision and why the Agency either accepted, or rejected all or part of the proposal or position.

**Response:** Because of the volume of comments that EPA generally receives on its proposals, EPA does not respond to each one individually. However, the suggestion to consider follow-up with those providing detailed comments can be included as a recommendation in EPA's best practices data base and public involvement training. See new language in the Policy's "Conduct public consultation and involvement activities" section (new language in bold italics): ***"Agency officials should clearly identify the issues for discussion, negotiation or decision prior to and during a public involvement process, so that participants understand on which issues they should comment. EPA officials should describe clearly the type of public involvement process planned, the schedule, EPA's expectations for the outcomes of the process and the timing and type of feedback that EPA will provide. If possible, the public should be involved in determining the design of the processes."***

#### U.S. Department of Interior, Office of Surface Mining:

On page 82338 of the draft document, EPA lists six basic functions for effective public involvement in any decision or activity, including the need to "assimilate information and provide feedback to the public." Then, on page 82343, EPA describes the key elements of good agency summaries of public participation. Elsewhere in the document, EPA refers to the importance of sound agency analyses. EPA may want to consider linking references to sound analytical methods with the importance of using good science in evaluating information and providing feedback to the public. Such an approach helps to validate agency determinations about the effect of a proposed action on public health or environmental quality.

**Response:** EPA appreciates this suggestion. See new language in the Policy's "Review and use input, and provide feedback to the public" section (new language in bold italics): ***"Gathering and using public viewpoints and preferences involves examining and analyzing public input in relation to scientific and other information relevant to the decision, considering if and how to incorporate that input into final program decisions, and carefully considering public views when making or modifying decisions."***

#### Association of State Drinking Water Administrators:

Later, EPA should get back to the community (both people who solicited comments and the public at large) explaining how the public comments affected the policy or project and how it is helping to improve the (local) environment. The feedback should be widely accessible (via newspapers, radio, letters) and easy to understand, and can also include action items and meeting minutes. If it is clear that the public's feedback is having a real impact, the community will be more likely to continue to participate in other environmental activities.

**Response:** EPA agrees that the Agency should explain how the public's input affected its decision. In the "Review and use input, and provide feedback to the public" section, see new language (in bold italics): ***"Agency officials should briefly and clearly document consideration of the public's views in responsiveness summaries, regulatory preambles, environmental impact statements or other appropriate documents. This should occur at key decision points."***

Following this section are a number of specific actions that should be included in any responses.

EPA will strive to include the additional suggestions in the comment in public involvement training and a best practices data base for EPA staff.

California Department of Toxic Substance Control:

One of the most challenging areas in the public involvement is including public input into the final decision by agency staff. It is valuable when the public understands the weight that public comment has on agency decisions, and we encourage efforts to make response to comments documents a useful communications tool with our communities, clearly demonstrating where public comment had (or did not have) an impact on a decision.

**Response:** EPA agrees that response to comments documents should be useful communication tools that describe the effects of the comments on the decision. The Policy supports these ideas in the section, "Review and use input, and provide feedback to the public" which describes information that should be contained in Responsiveness Summaries and other feedback documents. EPA will strive to include discussions on providing feedback in public involvement training for EPA staff.

Sierra Club, Committee on Environmental Justice:

...this section is very important to successful continuing public participation. In most cases, the public hearing process is a bureaucratic affair, with the purpose only to get the miscellany of comments on record according to the statutory requirements with responses, if any, coming well after the fact. As this section recognizes, it is important that the agency address the public's comments directly, explaining the agency's logic, explaining how the decision was reached, what role the public comments played, and why public comments and suggestions were rejected, if indeed they were. Yet it should be clear that assimilating information and providing feedback is not merely an exercise in drafting excuses. The feedback should be honest, clear, and subject to review. More to the point, however, the process should be flexible enough to allow the public to participate in more collaborative decision making.

**Response:** EPA agrees that the Agency should address the public's comments directly and provide clear feedback about how the decision was made. EPA also agrees that providing feedback should not be an "exercise in drafting excuses." In certain cases, as mentioned in the section on "Conduct public consultation and involvement," collaborative decision making is appropriate and effective. EPA will strive to include the above ideas in public involvement training for EPA staff.

International Association for Public Participation:

Decision makers should distinguish between agreement with comments from the public and demonstrating an understanding. Feedback that merely says "we don't agree" is not as accountable as feedback that demonstrates an understanding of the person's advice with an explanation of why it was not incorporated.

**Response:** EPA agrees that the Agency's responses should explain why comments were or were not incorporated in the decision. In the "Review and use input, and provide feedback to the public" section, see new language: *"Agency officials should briefly and clearly document consideration of the public's views in responsiveness summaries, regulatory preambles, **environmental impact statements** or other appropriate **documents**. This should **occur** at key decision points."* Following this section are a number of specific actions that should be included in any responses.

**Provide Feedback to Participants**

St. Regis Mohawk Tribe, Environment Division:

Other actions that can be imperative in public participation are providing timely feedback to the public. The public can become frustrated when agencies don't get back to them when they've participated in a specific project, study, or have provided comments to a document. Therefore, giving back to the community in terms of study results or results of comments they've provided is a way to keep the public involved in the future.

**Response:** EPA agrees that informing participants about the feedback process and providing feedback is important. The Policy suggests in the "Conduct public consultation and involvement activities" section: *"Agency officials should clearly identify the issues **for discussion, negotiation or decision** prior to and **during a public involvement** process, so that participants understand on which issues they should comment. EPA officials should describe clearly the type of public involvement process planned, the schedule, EPA's expectations for the outcomes of the process and the timing and type of feedback that EPA will provide.* Also see previous response.

University of Michigan - Dearborn, Great Lakes Environmental Research Laboratory:

Many [Dialogue] participants agreed on the need for continuous feedback and continuous attention to feedback. There seemed to be implicit agreement that EPA needs to pay attention to feedback early in any decision making process, and at least fine-tune goals accordingly.

International Association for Public Participation:

We applaud your call for accountability in Function Six to "information and provide feedback to the public." As mentioned above, this should be done throughout the policy process and not just at the end.

**Response to above two comments:** EPA agrees in principle with the benefits of providing continuous feedback throughout a decision-making process. However, EPA's resource constraints frequently do not allow for this to occur. EPA will seek to include in public involvement training for EPA staff the need to address the public's interest in receiving more frequent feedback.

Citizen #61:

This [Recommended Actions (a) under 6. Assimilate information and provide feedback to the public] is an excellent proposal which state cooperators have been promised many times in the past but have never seen in practice even when MOA's, etc. have been signed by both parties.

**Response:** EPA appreciates the comment. The EPA Public Involvement Policy, public involvement training and the best practices data base for EPA staff will provide guidance, training and information that will make it easier for EPA staff to give the public feedback. This comment was shared with EPA's Office of Congressional and Intergovernmental Affairs.

Los Angeles County Sanitation District:

LACSD's experience is that EPA's embracing of this goal merits improvement and we welcome the listing of this important outreach program element. We have two significant general comments.

LACSD often provides detailed written comments on proposed EPA rulemaking, draft policies and guidance documents. Many times these are lengthy letters and represent a composite of the viewpoints from both the wastewater and solid waste management sides of our organization as well as inputs, at times, from our sister agencies. All of the time however, these comment

letters represent a substantial investment of LACSD staff and Board time because the issues are significant to the ratepayers we serve. For the most part, we do not receive acknowledgment of the receipt of these comments from EPA and most importantly, there is no indication that the contents have been read and *understood*. While we would like to think that our comment letters are so well written that they require no additional discussion or clarification, in reality we think that this is not always the case and that indeed there are misconceptions and misunderstandings over what is being said.

**Response:** EPA appreciates the comment. Due to time and resource constraints, EPA typically does not send an acknowledgment of receipt of comments, although some programs offer it to commenters who request it. EPA will strive to include suggestions regarding contacting commenters for additional discussion or clarification in public involvement training materials and a best practices data base for EPA staff.

#### Los Angeles County Sanitation District:

In addition, regular e-mails, personal letters and a detailed, written Responsiveness Summary should be prepared. These steps allow a commenter to see that it was heard. Unfortunately, the sense of what occurs at EPA during rulemaking, in particular, is that all information goes into a "black hole" so to speak and little or no information seeps out.

**Response:** EPA agrees that detailed Responsiveness Summaries are important. They are prepared routinely. However, because of the volume of comments that EPA generally receives, EPA does not have the time or resources to correspond with commenters during its deliberations.

### **Describe all Sources that Influenced Decision**

#### Guild Law Center and Michigan Environmental Justice Coalition:

[applaud EPA's commitment to] providing a clear explanation of its ultimate decision once those comments are processed... However, we believe that the EPA should go even farther in detailing the reasons for and influences on its decision-making process. In particular, we urge the EPA to include informal comments, conversations and meetings with members of the public, industry representatives, outside consultants and permit applicants in its accounting of the influences on and reasons for its final decision.

...want to stress that the EPA should be sure that any explanation of its decisions include an accounting of informal comments or contacts that influenced the outcome, particularly contacts with the regulated community or permit applicant. Failure to do so will create a serious credibility problem. By explaining the relative importance of this informal, pre-comment information, the EPA could minimize such problematic perceptions. Thus, if the agency relied most heavily on technical data supplied by a permit applicant or on information that it found independently, its explanation of its decision should include a detailed account of these influences/bases for decision.

**Response:** It is a long-standing policy of EPA to include in the public record new information or data that are likely to affect the decision. This policy was stated in a 1993 memorandum from the EPA Administrator to all employees requesting that "A brief memorandum summarizing any significant new data or information likely to affect the final decision that is received during a meeting or other conversation is placed in the public record." EPA intends to emphasize this policy through public involvement training for EPA staff.

### **Explain Background Issues in Responsiveness Summary**

Minnesota Pollution Control Agency:

In the Policy, on FR page 82343, 1st column, (regarding assimilating information and providing feedback to the public), subitem a, "Recommended actions", there is a list of things EPA should report to the public in a [public participation] responsiveness summary. The MPCA believes that this list should include a proactive statement of "what action the EPA initially proposed and why EPA determined such an action was needed." Just stating what action was taken and public involvement does not allow readers to adequately understand the scope of influence derived from public involvement.

**Response:** In the "Review and use input, and provide feedback to the public" section, see new language for the content of responsiveness summaries: "***Describe briefly the action that EPA initially proposed and why EPA determined such an action was needed.***" Also note in preceding paragraphs: "*The Agency should demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Finally, the Agency should communicate the decision to the public and discuss how the public's input influenced the final decision.*"

**Respond to All Comments**

Maryland Department of the Environment, Technical and Regulatory Services Administration:

However, we have found, and we suggest to EPA, that the key to the effectiveness of a public involvement strategy is to be most proactive in letting the public know that their comments have been considered, even if the Agency did not agree. MDE often provides detailed comment response documents, addressing comments point-by-point, and we have found this to be very helpful. The Department does synthesize similar questions, but often attempts to address all of the comments that have been made. When feasible, we suggest that EPA attempt to do the same, particularly with respect to technical comments provided by States and co-regulators.

Iowa Department of Natural Resources, Water Supply Section:

At the State level, we are required to address every comment made during the public comment period (written and oral), in a responsiveness summary that is presented with the final rule to the commission that approves the drinking water rules. The summary is also sent to every individual that made the effort to comment. The federal government needs to also present such a summary to those who comment on their rules and policies. We realize that a summary is presented in the preamble of the final rules, but it does not always either satisfactorily address comments that have been made, or address all of the comments that have been made.

**Response to above two comments:** EPA agrees in principle that the Agency ideally should respond substantively to all significant issues addressed in the comments. However, EPA is not required to draft an individual response to every comment, nor are such responses necessary to enable the public, including the commenters, to identify the issues that were considered and EPA's resolution of those issues in making its ultimate decision. In some instances, EPA has responded to all comments in a Response to Comments document. Usually, however, EPA summarizes or categorizes the comments as mentioned in the Policy. How EPA responds to comments may differ due to the requirements of a particular statute, the applicable regulations or the needs of the program office. In the "Review and use input, and provide feedback to the public" section, see "*Agency officials should briefly and clearly document consideration of the public's views in responsiveness summaries, regulatory preambles, **environmental impact statements** or other appropriate documents. This should occur at key decision points.*" Also see new language "***The Agency should demonstrate, in its decisions and actions, that it***

**has understood and fully considered public concerns. Finally, the Agency should communicate the decision to the public and discuss how the public's input influenced the final decision."** Following this section is a list of specific actions that should be included in any responses.

## **Describe How EPA Will Integrate Public Input in Decisions**

### Kansas Department of Agriculture:

The draft policy omits how EPA plans to integrate public input in decision making. The draft seems to pay mere lip service to the integration issue- the issue determined by the Common Sense Initiative Council's Stakeholder Involvement Workgroup to be the area of greatest need. In 1998, the workgroup presented its report to EPA and recommended in part, "EPA stakeholder involvement needs to be clearly linked to decision making not simply an end in itself." The draft policy makes only a veiled reference to the integration concept by stating that the sixth step in effective public involvement is "assimilating information." In other words, the draft talks about *what* EPA needs to do, but not *how* EPA plans to integrate public input in the decision making process.

**Response:** EPA disagrees that considerable additional details regarding how to integrate public input should be added to the Policy. See above response.

## **Public Input Should Affect EPA's Decisions**

### Citizens #13-15, 17, 18, 20-22, 28, 31, 33, 36-38, 40-43, 46, 48-50, 53, 54, 57 (same comment provided by 25 citizens)

I want a public involvement policy that will recognize and respect public's knowledge... The public's contribution should influence the decision.

**Response:** EPA appreciates this comment. The EPA Public Involvement Policy supports the ideas of recognizing and respecting the knowledge that the public can provide, and allowing the public's input to influence the decision: ***"The Agency should demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Finally, the Agency should communicate the decision to the public and discuss how the public's input influenced the final decision."*** EPA will strive to reinforce these issues through public involvement training for EPA staff.

### Association of State Drinking Water Administrators:

Frequently, the perception exists that submitting comments rarely results in change.

**Response:** EPA appreciates this comment. EPA expects that when the Public Involvement Policy is implemented, that perception will be reduced.

### Environmental Defense:

People will only be willing to continue participating in Agency decisions if they believe that their ideas are seriously being considered and can have an effect on the outcome.

### National Environmental Justice Advisory Committee, Enforcement Subcommittee:

Kudos to the workgroup for recognizing the importance of "assimilation of input" [p. 4] -- what must be emphasized is that public participation does not stop at outreach and risk communication. This is one-way communication. True participation requires that residents' knowledge and concerns influence the Agency's decisions. If they don't feel they're being heard,

the public will cease participating.

**Response to above two comments:** EPA agrees that the Agency should provide feedback that allows people to know that their input is considered and used in EPA's decisions. In step 6, the Public Involvement Policy supports these ideas: ***"The Agency should demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Finally, the Agency should communicate the decision to the public and discuss how the public's input influenced the final decision."*** EPA will strive to reinforce these issues through public involvement training for EPA staff.

Golden Gate University, Environmental Law and Justice Clinic:

To foster continued involvement in the public participation process, it is crucial for members of the public to know that the contributions they offer actually make a difference. It is not enough to give citizens a forum to air their grievances, if ultimately their input is not accounted for. The Draft Policy addresses this in section 6, under the heading of *What Should EPA do to Ensure Full and Meaningful Public Involvement?* It suggests, "[the Agency should demonstrate in its decision and its actions, that it has understood and fully considered public concerns," and..."should communicate the decision and discuss the influence of the public's input in the final decision." It goes on to detail a series of recommendations that if adopted, would effectively inform the public of how their input played into the decision. Nonetheless, there is still an issue as to how heavily the public's influence is actually weighed in the decision making process. Presumably this balancing would occur on a case by case basis, however there are some general concepts that would be helpful to consider. [EJ considerations follow]

**Response:** See new language in the Policy's "Review and use input, and provide feedback to the public" section, which replaces the Assimilating information language. ***"Gathering and using public viewpoints and preferences involves examining and analyzing public input in relation to scientific and other information relevant to the decision, considering if and how to incorporate that input into final program decisions, and carefully considering public views when making or modifying decisions. For each decision, EPA officials should attempt to find a balance that enables the Agency to consider both relevant scientific and other information and expressed public values in determining how best to protect the public's health and the environment. The Agency should demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Finally, the Agency should communicate the decision to the public and discuss how the public's input influenced the final decision."*** Following this section are a number of specific actions that should be included in any responses to commenters which should provide ample explanation. EPA agrees that the Agency should balance the public's input along with technical and other considerations on a case-by-case basis.

Iowa Department of Natural Resources, Water Supply Section:

There is a perception from the public on State rules and policies, and from the State on federal rules and policies, that there is no point in commenting, because their comments will not result in any change -- so why make the effort.

**Response:** EPA appreciates this comment. EPA expects that when the Public Involvement Policy is implemented, that perception will be reduced.

National Association Of Home Builders:

While NAHB generally supports the goals and objectives EPA has laid out in its proposal, such as fostering a spirit of mutual trust and ensuring agency consultation with the public, NAHB



seriously doubts the policy will ensure that all interested parties have a meaningful opportunity to participate in EPA decisions. In fact, NAHB routinely finds that its public comments, suggestions, and preferences are not addressed or are ignored in EPA final publications and actions. For instance, while NAHB submitted over 80 pages of comments on EPA's draft Phase II storm water rule, we could find scant evidence that our concerns were considered at all in the final rule.

Citizen #60:

The community wants to feel that their participation bears fruit -that you truly do listen and that there is a positive result because of our input. This is POWER. If people don't see that participation, commenting, protesting, etc., yield some result, they won't become involved, or they will stop whatever involvement they have had. If there's nothing to show for their effort, they won't come back. You have a group here I see all around. They may be losing hope. They must feel they can make a difference. They won't bother if you keep asking for input but then you don't listen or go on with business as usual.

**Response to above two comments:** EPA appreciates this comment. EPA expects that when the Public Involvement Policy is implemented, dissatisfaction with the Agency's decision-making and feedback processes should be reduced. EPA will strive to address these issues in public involvement training for EPA staff.

Columbia River Crab Fishermen's Association:

The EPA needs to be responsive to public input if public trust is ever to be accomplished. Responsiveness to public input should not be driven by threat of lawsuit.

**Response:** EPA agrees that it is important to be responsive to public input, and the Policy reflects this issue in its sections on "Purposes, goals and objectives" and "Review and use input, and provide feedback to the public."

**Share Decision Making with Stakeholders**

Association of State Drinking Water Administrators:

We've learned that real public engagement is not just a matter of more meetings or hearings, but of creating a climate in which the public feels its views are respected. To that end, we urge the Agency to maintain an open process for feedback and a willingness to share decision making with stakeholders.

**Response:** EPA agrees that the Agency should use transparent decision-making processes that help build trust and mutual respect. However, the ultimate responsibility for decisions rests with the Agency.

See revised language in the "Introduction" section of the Policy (new language in bold italics):

***"EPA's mission is to protect human health and the environment. To achieve that mission, EPA needs to integrate, in a meaningful way, the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process."***

See also the revised language in step 6, Review and use input, and provide feedback to the public.

**Include and Consider all Sectors of the Economy in EPA's Decisions**

American Chemistry Council:

Importance of All Affected Sectors of the Economy

Administrator Christine Todd Whitman recently noted that EPA decisions never occur in a vacuum; they affect the nation's agriculture, trade, defense, energy, transportation, urban development, and other interests. These "stakeholder" interests need to be a key part of the Agency's deliberations, and as appropriate the Agency should seek to understand the impacts of its decisions on these sectors.

**Response:** EPA agrees that all stakeholders, including those representing affected sectors of the economy, should have the opportunity to provide input into EPA's decision-making process so that EPA decision makers can understand the impact the decision may have on all stakeholders.

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## 11. RESPONSIBILITIES FOR IMPLEMENTING THE POLICY

### Draft Policy's Description of EPA Management Responsibilities-Statements in Support

#### New Hampshire Department of Environmental Services:

A section of EPA's policy that is particularly notable, located on page 82343, is the one entitled "Who is responsible for ensuring that the draft policy is applied appropriately?" One can conclude that such assignment of responsibility, set forth in substantial hierarchical detail, will help facilitate the policy's successful implementation.

**Response:** EPA agrees that the Policy's assignment of responsibilities should facilitate successful implementation.

#### Delaware Nature Society:

Accountability is crucial for effective policy implementation. Identifying officials specifically responsible for carrying out the public involvement policies ensures its success.

**Response:** EPA agrees that the identification of the officials responsible for carrying out the Policy should facilitate successful implementation.

### Specify Project Managers' Public Involvement Responsibilities

#### City of Phoenix, Arizona, Office of Environmental Programs:

The mandate to implement this Policy needs to be at the Project Manager or Section Chief level, as well as the Administrator or Assistant/Associate Administrator levels. While the Policy indicates that managers "should" ensure that personnel are trained and that adequate public involvement funding needs are addressed (Page 82343), there are no specific instructions or plan on how that will be done, nor is there a requirement to develop instructions for a plan. While upper management can "consider resources" to ensure Policy implementation in performance standards, they are not required to ensure that resources are available. The Policy should specify what Project Managers are required to do with respect to public involvement and also specify that this critical duty will be in staff performance standards.

**Response:** This Public Involvement Policy is a guidance document for EPA, not a rule and, therefore, contains no requirements. The Framework for Implementing EPA's Public Involvement Policy, released concurrently with this Policy, lists specific actions EPA intends to take to carry out the Policy. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document. Regarding responsibilities below the senior EPA levels, see new language in the "Who manages the application of this Policy?" section of the Policy: ***"Managers should encourage and facilitate the proper training, support and counseling of staff, and,***

***recognizing overall budgetary constraints, should plan for and provide adequate funding for training or other needs in their specific budgets.***” Also see in Appendix 1 Guidance: ***“Deputy Administrators, Deputy Regional Administrators, Office and Division Directors and other appropriate supervisors: Ensure that they adequately support and recognize the public involvement efforts of their staff.”***

### **EPA Administrator Should Ensure Adequate Public Involvement Resources and Staffing Levels**

Washington State Department of Ecology, Toxics Cleanup Program:

In the list of Administrator responsibilities in columns 2 and 3, the addition of ensuring adequate staffing levels is critical.

Iowa Department of Natural Resources, Water Supply Section:

Page 82343: Item 1: “..the Administrator will:” Comment: We suggest a fourth item, “d. dedicate resources to this effort” be added to this list. Without resource commitment from the top administration, it will be difficult to implement any of these ideas.

**Response to above two comments:** EPA agrees that adequate staffing and resources are critical to successful implementation of the Policy. See new language in the “Plan and budget for public involvement activities” section (new language in bold italics): ***“When preparing budget and planning documents for regulatory and non-regulatory programs, Agency officials should make provision for resources and staff time dedicated to public involvement activities; time for conducting and evaluating public involvement activities; and staff and resources to provide technical assistance to the involved public where appropriate (see the Policy’s Step 3, “Consider providing technical or financial assistance to the public”).”***

### **EPA Managers Must Support and Invest in Public Involvement**

International Association for Public Participation:

The policy acknowledges heavy reliance on “the sound use of discretion by Agency officials.” Discretion is certainly called for, but it is not sufficient. Desire for good public process must be accompanied by training, mentoring, an explicit reward system, and resources for outside consultation. Too few decision makers or project managers are experts in public participation. Just as they would not hesitate to obtain outside assistance with legal, financial or scientific questions, the EPA culture must also support excellence and investment in public process.

**Response:** EPA agrees that the Agency should support and invest in effective public involvement processes. The Framework for Implementing EPA’s Public Involvement Policy released concurrently with this Policy lists specific actions EPA intends to take to carry out the Policy, including training, mentoring, rewards, and contractor resources. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

Rutgers University, Cook College, Center for Environmental Communication:

EPA will need to institutionalize public involvement. For PI to succeed it needs to be incorporated into agency activities, as opposed to implemented largely by a few PI “experts.” This will require a great deal of commitment, including funding support, of senior agency

administrators.

**Response:** EPA agrees that public involvement should be an integral part of agency activities, and that EPA should to provide funding support for effective public involvement activities. The Policy supports this suggestion in the section on "Who manages the application of this Policy?" that states the leadership of EPA will be: ***"Encouraging effective public involvement by providing their staff and managers guidance, technical assistance, resources, training and incentives, as appropriate."***

### **EPA Management Must Adopt the Policy and Ensure that Staff Implement It**

Citizen #62:

I encourage top EPA administrators and management to adopt it [the Policy] and ensure that all EPA staff follow its tenets, especially those on projects which ADEQ and EPA work closely.

**Response:** The Policy contains guidelines that should be used by all EPA managers and staff. EPA appreciates this comment, and has released its Framework for Implementing EPA's Public Involvement Policy that lists specific actions EPA intends to take to carry out the Policy, including training and evaluation. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

### **Integrate Public Involvement in All Programs**

American Chemistry Council:

With respect to the question, "Who is responsible for ensuring this draft policy is applied appropriately?" the Council strongly endorses the position that public involvement is an integral part of any program and should not be treated as a separate or subordinate function.

**Response:** EPA agrees that public involvement should be an integral part of the Agency's programs and so states in the Introduction of the Policy: ***"EPA's mission is to protect human health and the environment. To achieve that mission, EPA needs to integrate, in a meaningful way, the knowledge and opinions of others into its decision-making processes. Effective public involvement can both improve the content of the Agency's decisions and enhance the deliberative process."*** and in the section noted in your comment: ***"Public involvement should be an integral part of any Agency program, routinely included in decision making processes."***

National Environmental Justice Advisory Committee, Enforcement Subcommittee:

There is the Agency-wide issue of coordination across agency offices/divisions/programs, with some workgroups integrally involved in the charge for greater participation, and others completely unaware of Executive Order 12898 or of the Agency's public participation policy. Involving individuals from the major EPA program offices and regions is a good first step [as you've done]. It seems key to continue "spreading the word" about the role and methods of inclusion to familiarize EPA employees with your recommendations.

**Response:** EPA agrees that the Agency should continuously "spread the word" about effective public involvement when implementing the Policy. Internal communication, training and sharing best practices that support the Policy are part of the Framework for Implementing EPA's Public Involvement Policy released concurrently with this Policy. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

### **Draft Policy Contains Too Much Redundant Administrative Reviews and Requirements**

Florida Department of Environmental Protection, Division of Water Resource Management:

The draft Policy provides a perception that the process as a whole is "top heavy" in administrative review and requirements. There are too many responsibilities and layers of administrative review required throughout the document. In addition, to the extent certain responsibilities and review are necessary, they are repeated throughout the document. Overall, this redundancy makes it difficult to clearly see the exact requirements and reviews that are essential for implementing an effective public review.

**Response:** This Public Involvement Policy is not a rule, and therefore does not contain any requirements. While it contains numerous recommendations for conducting public involvement activities, none are required. EPA has restructured the Policy to include details on recommended responsibilities in the Appendix 1 Guidance.

**Implement the Policy**

Shoshone Natural Resources Coalition:

This Policy needs to be held up as the way everyone who works for the EPA will treat the public. It must be consistently implemented, conducted and enforced throughout the Agency, starting with the Administrator.

There is a high level of emphasis on creating opportunities for public input in this Policy. That needs to be maintained within the Agency.

Above all, this Policy should not be used as patronization of the public. It has to be the "must-read" document for all Agency employees and the "gospel" for Agency management.

**Response:** EPA appreciates this comment. The Framework for Implementing EPA's Public Involvement Policy released concurrently with this Policy includes training, sharing of public involvement information among EPA staff, and evaluation of EPA public involvement activities. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

National Association Of Home Builders:

EPA's public outreach and involvement efforts are not merely some beneficial service that EPA is offering to the public. Rather, this movement is being compelled by a host of Congressional mandates and Executive Orders that stem from deep-seated public frustration over the deficiencies of EPA's public involvement process. Appendix I of the Draft Public Involvement Policy contains the extensive list of the Laws, Executive Orders, and Presidential Memoranda which require EPA to conduct public involvement activities. EPA should recognize that these mandates are driven by public frustration over the ineffectiveness and lack of implementation of EPA's prior policy, and the list will continue to grow unless serious attention is paid to EPA's public involvement efforts.

**Response:** EPA takes seriously the public involvement requirements set forth in applicable statutes, Executive Orders and Presidential Memoranda. EPA is committed to providing earlier and more meaningful opportunities for public involvement than are required statutorily. EPA believes that the revised Policy will further strengthen EPA's longstanding commitment to involving the public and will improve the consistency and quality of EPA's already extensive public involvement activities. The commenter misunderstood the content of Appendix I of the Draft Policy. Appendix I did not list statutes, Executive Orders, and Presidential Memoranda that contain public involvement requirements, rather it attempted to list all authorities under which EPA acts.

National Association Of Home Builders:

NAHB suggests that EPA's new Public Involvement Policy will not be effective if it is simply the documented theories of an agency working group. It must translate into the practical opportunity for the public to influence agency decision making in a real sense. EPA should ensure that its new policy is fully and efficiently implemented to achieve maximum effectiveness.

**Response:** EPA appreciates this comment. The Framework for Implementing EPA's Public Involvement Policy released concurrently with this Policy lists specific actions EPA intends to take to carry out the Policy, including training, sharing of public involvement information among EPA staff, and evaluation of EPA public involvement activities. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

### **Skeptical that EPA Will Implement the Policy**

#### Sierra Club, Committee on Environmental Justice:

And finally, we see nothing particularly compelling in the Policy to provide the hope that the Policy will result in more meaningful involvement of the public. The Policy, in all the right words, suggests how things should work better while providing no guarantees that the climate of the more common decision making approach of "decide, announce and defend" can be changed... The purposes, goals and objectives listed in the proposed Policy reflect this dual importance, yet the Sierra Club is somewhat skeptical that the proposed Policy will meet the stated objectives.

**Response:** The Policy is a guidance document for EPA, not a rule and therefore does not contain requirements. The Framework for Implementing EPA's Public Involvement Policy released concurrently with this Policy lists specific actions EPA intends to take to carry out the Policy, including training, sharing of public involvement information among EPA staff, and evaluation of EPA public involvement activities. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

#### Wisconsin Department of Natural Resources:

Generally the Draft Public Involvement Policy is sound; however, because the policy "is not legally enforceable," its impact is completely dependent on the seriousness of an ongoing strong commitment and effort by EPA. Will EPA, at all levels, embrace the policy and the philosophy within it? That will be a real measure of the success of this effort.

#### National Association Of Home Builders:

EPA's Public Involvement Policy Has Not Translated Into Public Satisfaction. EPA is proposing to replace its "five basic functions" of the 1981 Public Participation Policy with a new "six basic function" process outlined in the Draft Public Involvement Policy. NAHB does not so much question the validity of the proposed process, but is rather concerned with its implementation. Given the fact that EPA's prior 1981 policy was never fully implemented or consistently followed, NAHB is concerned the new policy will suffer the same fate and be equally ineffectual. This will only lead to further public dissatisfaction with EPA's public involvement efforts.

#### New York City Environmental Justice Alliance:

As is the case with the other potentially positive measures enumerated in the draft policy, any efforts to bolster participation by those in traditionally under served communities will only be successful if they are fully implemented by agency staff, across the board. Thus, while the stated goals and proposed measures set forth in the draft are certainly encouraging, it is the implementation of those goals and measures that will truly determine the success of the new policy.

**Response to above three comments:** EPA appreciates the comments. The Framework for Implementing EPA's Public Involvement Policy released concurrently with this Policy lists specific actions EPA intends to take to carry out the Policy, including training, sharing of public involvement information among EPA staff, and evaluation of EPA public involvement activities. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

### **Create Accountability/Performance Evaluation System for EPA Employees' Public Involvement Efforts**

#### Citizens for Responsible Water Management:

Occasional critiques by peers at each level might help those few [EPA staff] whose bias or intolerance is visible.

**Response:** EPA appreciates this comment. The Framework for Implementing EPA's Public Involvement Policy lists specific actions EPA intends to take to carry out the Policy, including human resource systems of reward and personnel performance standards and assessment. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

#### People for the Ethical Treatment of Animals and Earth Island Institute:

Compliance with the draft Policy [should] be assessed as a line item in annual performance appraisals of staff and management. In addition to any other strategies under consideration by the Public Involvement Policy Implementation Workgroup, PETA and EEI believe it is critical that annual performance appraisals specifically evaluate staff and management's compliance with the Public Involvement Policy. EPA management must demonstrate a serious commitment to implementing this policy; otherwise, it will remain only words on paper.

#### Rutgers University, Cook College, Center for Environmental Communication:

Other organizational changes will also be required. For example, the agency will need to incorporate public involvement skills and experience into job descriptions and evaluations of program staff.

#### Shoshone Natural Resources Coalition:

Our concern is that it is not going to be made a rule of conduct, but merely a suggestion of behavior. In order for this policy to work, the Agency must enforce it and develop consequences for employees who do not follow it.

#### Children's Environmental Health Network:

Additionally, a key consideration not discussed in the policy is in its enforcement. The Network urges the Agency to describe how, or if, officials who do not do an adequate job following this guidance will be sanctioned. What is their incentive to follow both the letter and spirit of this policy?

#### Guild Law Center and Michigan Environmental Justice Coalition:

The EPA notes that the Draft Policy is applicable to most decisions made by the agency, but that "[agency officials must have the flexibility to determine appropriate public involvement, and will be accountable for those decisions." Draft Policy, 65 Fed. Reg. at 82338. However, the EPA also states that "[the Draft Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA or any other agency." Id. Given these limits on enforceability, the GLC and the MEJC are concerned that

agency officials will not be held accountable for their decisions in applying this Policy.

**Response to above five comments:** EPA appreciates these comments. The Framework for Implementing EPA Public Involvement Policy released concurrently with the final Policy lists actions EPA intends to take to carry out the Policy. The "Evaluation and Accountability" section of the Framework adopts a five-year framework with a list of public involvement activities expected to be performed by staff and managers. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for the Framework.

International Association for Public Participation:

While we understand why you included a statement that the Policy is not legally enforceable, we also understand why this statement raises a red flag for many members of the public. One mechanism we endorse is to include public participation as a requirement for all EPA work plans and decision makers, not just the responsibility of a community relations staff, and that performance in the realm of public participation be an explicit part of project management and senior management performance/salary evaluations. As long as implementation of the Policy is seen as someone else's responsibility, the actual decision makers will be less likely to embrace it. Its inclusion can also mitigate political pressure that could contravene a public process.

**Response:** The Public Involvement Policy and Framework for Implementing EPA Public Involvement Policy provide guidance for all who work at EPA, not just the "community relations staff" of the Superfund program. Also see above response.

National Environmental Justice Advisory Committee, Enforcement Subcommittee:

Differences between a recommendation and a requirement -- the former does not have any teeth in terms of holding Agency employees to any minimal standards of participation. Again, this is an Agency-wide question, but has the workgroup thought about ways the EPA could hold industry, risk assessors, and other stakeholders accountable for including the public in a meaningful way?

**Response:** EPA appreciates the comment. However, the Policy applies only to EPA. EPA cannot impose requirements on industry, risk assessors, and other stakeholders through the Policy. Using the Policy, EPA hopes to persuade and lead by modeling best practices and showcasing the best of others.

Golden Gate University, Environmental Law and Justice Clinic:

In conclusion the Draft Policy does an excellent job of detailing the need for increased efforts on the part of EPA to elicit and incorporate public participation. It also lays out creative and effective strategies for enacting positive change. However, all these intentions are only meaningful if the Policy is actually implemented and enforced. Therefore provisions should be made to hold the EPA accountable to the public, in addition to itself.

**Response:** The Framework for Implementing EPA's Public Involvement Policy released concurrently with the final Policy has evaluation as an integral part, and includes opportunities for participants to evaluate the Agency's public involvement performance. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for the Framework.

## **Create a Public Involvement Complaint Process**

Guild Law Center and Michigan Environmental Justice Coalition:



We believe that the EPA must, at minimum, establish an informal method for making complaints about failure to provide adequate opportunities for public participation. This process could be as simple as listing a person on each Public Notice who will accept and review citizen complaints about the public participation process. The reviewing official should be authorized to direct agency officials to expand public participation opportunities and to reprimand those officials who consistently fail to apply the Draft Policy appropriately. Without some complaint process, we believe that many public participation problems may never come to the EPA's attention. If the agency is making a serious commitment to meaningful public participation, it must provide some process for critiquing its efforts and holding its officials accountable for their decisions in this area.

#### Children's Environmental Health Network:

The Agency also needs to outline what steps citizens can take if they are not satisfied with the response of the "Agency officials involved" to the concerns they may raise.

#### Salado Creek:

You must have accountability. When communicating with the public, you should include your boss's name so the public can go higher if necessary. EPA must have independence from other agencies.

**Response to above three comments:** Though EPA has no centralized public involvement complaint process, there usually is a contact person listed in notices, fact sheets, etc. Individuals should contact this individual first. If this does not resolve the issue, then in the "Who manages the application of this Policy?" section, the Policy states that EPA's Administrator, Assistant and Regional Administrators should provide leadership and direction for their managers and staff, "***Ensuring that effective public involvement is a cornerstone of all decisions, activities, plans and pilots, and fully complies with all applicable legal requirements***". The Framework for Implementing EPA's Public Involvement Policy, released concurrently with the Policy has evaluation as an integral part, and includes opportunities for participants to evaluate the Agency's public involvement performance. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for the Framework.

#### **Create a Process to Evaluate EPA's Public Involvement Activities**

##### Rutgers University, Cook College, Center for Environmental Communication:

EPA should consider including eliciting feedback or conducting formal evaluation as a basic function of effective public involvement. This would make it a seventh basic function. Other researchers and I have written about the importance of evaluation and an EPA task force is doing an admirable job of increasing the amount and effectiveness of agency evaluation of PI. While evaluation is in the text of the policy, some form of feedback (particularly for mid course corrections) is critical to success and therefore deserves to be elevated to a "basic function."

**Response:** EPA agrees that evaluation should be added to the basic function steps listed in the Policy, and EPA plans to make evaluation an integral part of implementing the Policy. EPA added a new step 7 to the Policy (new language in bold italics): "***Evaluate public involvement activities. Goal: To evaluate the effectiveness of this Policy and of public involvement activities. Actions in this section include: Agency officials should evaluate and measure, on a continuing basis, both the effectiveness of the Policy to improve public involvement in regulatory and non-regulatory processes, and the effectiveness of public involvement activities.***" Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for

the Framework for Implementing EPA's Public Involvement Policy.

Doctoral Student, University of Washington Geography Department:

Although the need for performance metrics were mentioned, no actual metrics were provided in the policy. I recommend adding a more detailed discussion of performance metrics. The Hanford Openness Panel - a broadly representative group of active Hanford Stakeholders and Tribal Representatives - developed recommendations in this regard that might be useful to the agency. Please see Appendix 14 of the 1999 Hanford Openness Workshop Report <http://www.hanford.gov/boards/openness/trac-0828/pdf/appendix14.pdf> for details. The full report is on line at <http://www.hanford.gov/boards/openness/trac-0828/index.html>.

**Response:** EPA appreciates this information, and will include it in the Agency's efforts to collect public involvement best practices and evaluation information. Evaluation measures are intended to be developed as part of the evaluation framework that EPA plans to support implementation of the Policy. See above response.

National Association Of Home Builders:

NAHB also believes that EPA should mandate strict annual reporting requirements to gauge the effectiveness of the program. The annual reporting requirements should include more clearly defined evaluation criteria as well as performance measures that would allow EPA and the public to assess the agency's progress.

**Response:** EPA plans to make evaluation an integral part of implementing the Policy, and has developed an overall evaluation framework that EPA plans to use to support implementation of the Policy. This framework does not include annual reporting as suggested, since it would be too resource intensive, but it does recommend periodic reporting to the Administrator on EPA's implementation of the Policy. Evaluation measures should be developed as part of the evaluation framework. See the Framework for Implementing EPA's Public Involvement Policy at <http://www.epa.gov/publicinvolvement/framework.pdf>.

Sierra Club, Committee on Environmental Justice:

Finally, members of the public should be full participants in the evaluation process. The public participation process can only be improved if all the participants continue to learn what works and what doesn't.

**Response:** EPA agrees that members of the public should also be involved in EPA's public involvement evaluation processes. The Framework for Implementing EPA's Public Involvement Policy released concurrently with the new Policy has evaluation as an integral part, and includes opportunities for participants to evaluate the Agency's public involvement performance. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this Framework.

National Environmental Justice Advisory Committee, Enforcement Subcommittee:

As with all programs and interventions, it is important to track the application and efficacy of the recommendations as they're carried out in practice [e.g., "in the field"]. It would be wise to set up a means of evaluating and revising, as necessary, the recommendations, dissemination techniques, consistency of their application and results of participation techniques.

St. Regis Tribe, Environment Division:

As environmental programs go, we know that public involvement is an integral part of making them successful. However, just as important is evaluating our efforts with public involvement in

environmental issues and policy.

Oregon Hanford Waste Board and the Oregon Office of Energy:

The Draft Policy also fails to provide performance measures to evaluate the quality of EPA public involvement activities even though it mentions the need for evaluation criteria... The Board and Oregon Energy strongly encourage EPA to strengthen this section by adding specific performance measures to determine whether or not Headquarters, the Regions, or individual programs took the appropriate actions to achieve the desired goal of each one of the six basic functions. Stakeholders should also be involved in determining whether or not EPA has achieved its goals using the performance measures provided.

In the combined sections discussing how and who is responsible for ensuring effective and meaningful public involvement, EPA should describe:

- The consequences for Headquarters, the Regions, or individual programs that fail to satisfactorily achieve the goals of the six basic functions.
- The incentives for Headquarters, the Regions, or individual programs that successfully achieve the six basic functions.

The Board and Oregon Energy strongly believe that if EPA is truly committed to conducting effective public involvement, the Draft Policy must include performance measures to judge whether the public involvement activities conducted are meaningful and productive. The Board and Oregon Energy also believe the only way to ensure public involvement occurs and to hold program administrators and managers accountable is to identify consequences for failure. Without this additional detail, this Guidance merely perpetuates the status quo: inconsistent, often times ineffective, and occasionally token public involvement.

**Response to above three comments:** EPA agrees that the Agency should evaluate EPA's public involvement activities as they are "carried out in practice," and EPA agrees that evaluation is a critical element in ensuring the success of EPA's public involvement activities. EPA plans to make evaluation an integral part of implementing the Policy, and has developed an overall evaluation framework that EPA intends to use to support implementation of the Policy. Evaluation measures should be developed as part of the evaluation framework, as shown in the Framework for Implementing EPA's Public Involvement Policy, which can be seen at <http://www.epa.gov/publicinvolvement/framework.pdf>. EPA has also added a new step 7 to the Policy (new language in bold italics): "***Evaluate public involvement activities. Goal: To evaluate the effectiveness of this Policy and of public involvement activities. Actions in this section include: Agency officials should evaluate and measure, on a continuing basis, both the effectiveness of the Policy to improve public involvement in regulatory and non-regulatory processes, and the effectiveness of public involvement activities. Develop and use a broad-based Agency-wide internal survey to evaluate how well the Agency performs its public involvement activities, and to determine if EPA is using the Public Involvement Policy to improve related activities...***"

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## 12. COMMENTS RECOMMENDING EDITORIAL CHANGES TO THE POLICY

### EPA Should Streamline Draft Policy

Minnesota Pollution Control Agency:

The Federal Aviation Agency (FAA) has a Community Involvement Policy Statement on the Web. This is a 1-page document. Still, it clearly conveys key goals for its public involvement program that are strikingly similar to those expressed by EPA in approximately 30-pages. The

greatly improved clarity provided by the much more succinct FAA policy makes it easier for both staff and the public to understand the goals and when they've been achieved. Please consider making the EPA policy similarly clear and succinct. If necessary, EPA can always publish preamble to support a more succinct statement of policy.

McNulty Group:

What needs to be in the Policy is the concept, not necessarily the detailed "how to."

**Response to above two comments:** EPA restructured and streamlined the document to place details of the seven steps in Appendix 1 Guidelines. The Policy's main function is to provide recommendations and guidelines to EPA staff and managers across the Agency, and to be applicable to the wide spectrum of EPA activities that involve the public. It is meant to be comprehensive and to provide some of the more basic "how to" details.

Minnesota Pollution Control Agency: (the following 7 comments are responded to individually):

1. While this Policy is comprehensive, for a variety of reasons, it is also difficult to comprehend. The MPCA believes that comprehension is directly related to success in implementing a policy. The MPCA is concerned that this Policy may face implementation hurdles related to its complexity.

**Response:** EPA disagrees that the Policy may face implementation hurdles related to its complexity. The Framework for Implementing EPA's Public Involvement Policy released concurrently with the final Policy lists specific actions EPA intends to take to carry out the Policy, including mechanisms to share information among staff about the Policy, and public involvement training. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

2. A concise Policy supported by a separate preamble discussion would be clearer. EPA uses this approach when it proposes rules in the Federal Register (FR). When someone wants to understand reasoning behind a rule provision, they research the associated FR preamble. A Policy should clearly state broad goals. EPA could then use FR preamble to support those goals. Another approach used in rule publications is to provide an index in the FR that outlines the proposed language (this would make the Policy even longer than 9 pages and may be lost in another publication format).

**Response:** EPA agrees that a concise summary would be useful, but disagrees that much of the existing Policy text should be located in a preamble. The final Policy is separated into the Policy and Appendix 1 Guidelines which further details the seven steps.

3. The EPA should consider using a policy template to lend a consistent format to its policies.

**Response:** This comment is outside the scope of the Policy. It was shared with EPA's Office of Communications.

4. EPA should clarify both its writing voice and its intended audience. EPA appears to have written the Policy to apply to both the EPA and to other agencies (the Policy advocates that local authorities implement similar policy, it even discusses how local units of government should run Local Advisory Committees). The MPCA believes this may contribute to EPA using a "passive writing voice" in the Policy in lieu of a clearer "active writing voice". It also adds to Policy length. The EPA should write its Policy to apply to itself. A clear policy provides a better model for other agencies to emulate.

**Response:** EPA agrees that the "passive voice" text should be changed and that the intended audience should be clarified. Please see new language throughout the document that clarifies

that this Policy applies only to EPA, and not to other agencies (although it can be used as a model for other agencies). EPA has removed many of the uses of "passive voice" throughout the document. The only discussions of advisory committees in the Policy refer to those subject to the Federal Advisory Committee Act.

5. The Policy loses clarity due to its draft format. As an example, EPA normally proposes rules in a final form, seeks comments, and then publishes any resulting modifications. In the proposed Policy, EPA uses the term "draft policy" throughout. EPA also includes extra explanations that seem inappropriate to a final Policy (see FR p82341, column 3, 3rd paragraph in brackets).

**Response:** The term "draft" was used to clearly indicate that the version of the Policy published for comment. EPA has removed all references to the "draft" Policy in the final Policy, as well as requests for specific information in public comments, as noted in the comment. EPA will make the full final Policy available.

6. The Policy repeats many 'disclaimer statements' that EPA might better state once as a general goal or in a preamble. Examples include such themes as "choose the right [action] for the occasion," "the public should be involved to the extent possible," "[EPA] must comply with all applicable requirements," and "[EPA] should provide early advance notice [of action] when appropriate."

**Response:** EPA disagrees that general "disclaimers" should be stated once up front. Since the Policy contains general recommendations that are applicable to the variety of EPA activities that involve the public and is not prescriptive, it contains many such "disclaimer sentences." Discretion is necessary when applying the Policy to very diverse situations.

7. EPA should provide the Appendices to the Policy as preamble in the FR.

**Response:** EPA does not agree that the information from the appendices should be included in the Policy's preamble. EPA believes that information of a more general and summary nature should precede the Policy in the FRN.

Doctoral Student, University of Washington Department of Geography:

The heart of the policy appears in the section that outlines the six basic functions for effective public involvement. This section should be moved closer to the beginning so that the information is easy to find and access.

**Response:** EPA agrees that the basic steps were difficult to find in the draft Policy. The final Policy FRN lists the steps in the second paragraph of Supplemental information, and explains those steps in Appendix 1: Guidance.

### **Don't Just Provide Opportunity for Communication, but Actually Communicate**

McNulty Group:

References to providing opportunity for involvement There are at least a few phrases saying essentially this in the draft Policy. ...providing an opportunity to participate is not sufficient. Sooner or later those affected by an action \*will\* have something to say. Any project manager should want to hear from these people early in the project, when it is easy and less expensive to accommodate their concerns and incorporate their ideas. Therefore all these references should change to communicating with those affected rather than just providing opportunities for communication.

**Response:** EPA agrees that the Policy's text should emphasize communicating with the

public. Please see new language in the Policy to address this issue: Under the Policy's "What Are the Purposes, Goals and Objectives of the Policy?" section, see revised purpose (new language in bold italics): ***Promote the use of a wide variety of techniques to create early and, when appropriate, continuing opportunity for public involvement in Agency***", and also ***"Identify, communicate with and listen to all affected sectors of the public."***

## **Include Reference to Public Involvement Requirements in Clean Water Act**

### Kansas Department of Agriculture:

The draft under-emphasizes the mandatory nature of public participation in administration of the federal Clean Water Act. While the draft says that one of the goals is to ensure fulfillment of legal requirements imposed by statute and to involve members of the public "when possible," it fails to mention that under the Clean Water Act, public involvement is not optional. 33 US C § 125 J ( e ) states:

Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.

Id. emphasis added. Public participation under the Clean Water Act is not a matter of convenience or discretion. Public participation is mandated. Furthermore, it is insufficient under the Clean Water Act simply to provide notice.

The law plainly states that the public shall participate in the "development, revision and enforcement" of the act. We would like to see a direct reference in the policy to EPA's commitment to public participation in Clean Water Act matters.

**Response:** EPA disagrees that the Policy should specifically reference the EPA's commitment to public participation in Clean Water Act matters. The Policy is meant to supplement public involvement requirements in all of EPA's programs, including administration of the Clean Water Act and other statutes. The What Are the Purposes, goals and objectives of the Policy?" section states: ***"This policy supports EPA in meeting statutory and regulatory requirements regarding public participation, particularly in environmental permitting programs and enforcement activities."*** (Regulations, such as those found at 40 CFR Part 25 "Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act." (See Part 25 at <http://www.epa.gov/publicinvolvement/pdf/part25.pdf>.)

## **Include Overview of Paperwork Reduction Act in Preamble**

### Florida Department of Environmental Protection, Division of Water Resource Management:

Finally, as part of the preamble to this policy, we suggest the EPA provide a brief overview of the Paperwork Reduction Act (PRA). It is mentioned throughout the Draft Public Policy. Clarification should be provided so the public clearly understands that the PRA is in effect to reduce the paperwork burden on the public.

**Response:** EPA disagrees that the Policy should contain an overview of the Paperwork Reduction Act in the preamble. However, EPA agrees that the Policy should contain more references to this Act. See new clarifying language in several sections of the Policy that refer to the Paperwork Reduction Act in "Plan and budget for public involvement" under "a. Actions:",



under "Identifying the interested and affected public", "b. Methods:" and several more times throughout the Policy.

### **Include References to Other EPA Public Involvement Guidance Documents**

#### California Department of Toxic Substance Control:

While it is understood that this draft is intended to provide a broad brush approach to public participation, it may give the mistaken impression that guidance documents such as Community Relations in Superfund, Public Involvement in Environmental Permits, and the RCRA Public Involvement Manual are superceded. These documents provide a much more "nuts and bolts" approach to public involvement and the lack of any reference to them in the draft policy statement should be corrected. Staff, responsible parties, contractors and the public should be directed to these documents for specific information on how U.S. EPA will respond to the public's need for information at key points in the process.

**Response:** EPA agrees that the existence of these other documents should be referenced in the Policy. See new language in the Policy's "Provide information and outreach to the public" section, "a. Actions:" (new language in bold italics, new bullet): ***"Use EPA's existing public involvement manuals, which contain helpful advice for involving the public in specific EPA programs."*** This includes a reference to the website as well, at <http://www.epa.gov/publicinvolvement/involvework.htm#manuals>. Further, an addendum to the Policy provides a list of references.

### **Describe Changes from 1981 Policy**

#### Washington State University:

There is very little, if at all, any apparent change in the Draft 2000 Policy from the 1981 policy. A description of specific changes would have been extremely useful.

**Response:** EPA appreciates the comment. The Draft Policy made numerous changes to the 1981 Policy. In discussing the changes, the Preamble of the draft 2000 Policy groups changes by type and describes each one.

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## **13. GENERAL COMMENTS**

EPA received many public comments that support the Draft Public Involvement Policy. These supportive statements are shown below in the categories of "Support the draft policy," "Support EPA's effort to revise the Policy," "Partially support the draft Policy," and "Support EPA's commitment to public involvement." EPA appreciates these statements of support. EPA did not prepare individual responses to the following comments; however, EPA responded to all of the substantive recommendations from these organizations in other sections of this document.

#### Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee, Inc.:

This document is clearly written and promotes appropriate and acceptable values and activities regarding public participation. The CAP strongly supports this policy...

New York City Environmental Justice Alliance:

On behalf of the New York City Environmental Justice Alliance, I am writing to express my support for the EPA Draft 2000 Public Involvement Policy as published at 65 Fed. Reg. 82,335.

New Hampshire Department of Environmental Services:

In reviewing the Draft Policy, it is apparent that substantial thought and effort went into its development. It is well written, organized, and thorough. Further, it espouses a tone of openness and a commitment to ensuring that the public be involved in agency decision making. ....the N.H. Department of Environmental Services has also developed a public participation policy, adopted on December 12, 2000 and available on line at [www.des.state.nh.us/ppp.htm](http://www.des.state.nh.us/ppp.htm), and it is gratifying to observe that the two federal and state policies are remarkably consistent, both in content and approach.

Michigan Environmental Council:

The Michigan Environmental Council has read the draft proposal on public involvement and is pleased with the progress thus far. As we gain access to new technology and science the needs of the public as well as the policy that sets standards for the health and safety of future generations must continue to evolve. We understand the USEPA is adjusting policy to adequately meet these challenges.

We have appreciated the accessibility offered by the EPA when complicated problems arise, but also acknowledge that a twenty-year-old public participation policy has inadequately addressed many challenges presented by more intensely technical and scientific jargon, a more polarized society in terms of race and economic status, and dramatic changes in communications technology. Fortunately, the EPA has recognized the need for a living policy to keep citizens involved in decision making for a living Earth. We believe that the amendments proposed to the EPA's 1981 Public Participation Policy represent a fair and genuine effort to modernize citizen involvement opportunities.

Harvey M. Sheldon, P.C.:

Generally the Policy is certainly acceptable, since it pretty much tries to promise everything to everyone, i.e. it's hard to fault.

Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit, Hazardous Materials and Waste Management Division:

Overall, this policy reflects needed improvements to the EPA's approach to public involvement. Of particular note is the emphasis on mechanisms appropriate for given circumstances. The use of the Internet, electronic documents, email and tailored technical meetings will accomplish much greater public understanding and awareness than traditional means.

The Groundwater Foundation:

The Groundwater Foundation was founded on the idea that informed and motivated citizens are the basis of sustainable environmental stewardship including groundwater protection. As a result, we are very pleased to see EPA developing such detailed plans to promote involvement by citizens. I was especially pleased to see the agency's emphasis on audiences with limited access or traditional links to EPA rule making, enforcement actions, and regulatory and



pollution prevention programs.

Professor, San Jacinto College South - Houston, TX:

I have read and support the draft of the public involvement policy. I have participated in the Brio Superfund for 11 years. I remember a time when our community had to go through GAO to get EPA to listen to us. EPA has made advances in soliciting comments from the public that must live with the environmental regulations and policies that the agency proposes. This policy will go a long way in continuing that progress.

International Association for Public Participation:

Overall, the policy is commendable and covers most of the areas we believe are important.

Staff, Arkansas Department of Environmental Quality:

The policy is comprehensive and stands as a model for public involvement in EPA decision making on complicated, and often sensitive and controversial matters. I encourage my fellow Arkansas Department of Environmental Quality staff to follow its general principles and specific points which are appropriate to our dealing with the public.

National Farm\*A\*Syst Program:

I am very impressed by the Policy's thoroughness and integrity, and the scope of suggested activities and responsibilities, particularly in the description of the "six basic functions for effective public involvement in any decision or activity" (to which I gave most of my attention). I am glad to see the discussion about "identifying the interested and affected public" as this is key to the whole process. I applaud all your efforts in drafting this policy, and I look forward to its implementation! I wish all of you the best of luck, and encourage you to take advantage of the wisdom and services of facilitators/educators/public participation organizers in public or private organizations dedicated to these functions.

City of Austin, Texas Water and Wastewater Utility:

We value the Public Involvement Policy because stakeholder meetings are an important opportunity for us to provide meaningful information to the EPA.

New York State Department of Environmental Conservation, Office of Administration:

We agree that the required activities covered in the Draft Policy (p. 82338) should be considered the minimum level of public involvement and additional activities should always be considered whenever appropriate.

Citizens for Responsible Water Management:

This draft policy statement properly deals with all critical elements of interaction between the public and government, a model other agencies would do well to emulate.

Lake County Health Department, Waukegan, Illinois:

Overall, the policy as drafted is comprehensive and if implemented as written should improve public participation in EPA program/policy development process.

Florida Department of Environmental Protection, Division of Water Resource Management:

The policy provides avenues for an increase in the public's knowledge and understanding of federal environmental issues that may affect them. It ensures adequate opportunity for citizens to take part in planning and decision processes. Overall, we find the policy and the supporting documents explicitly set the stage for further involvement of the public in developing and adjusting procedures of the federal government that affect them. This policy provides for a mutual exchange of valuable information for the benefits of the agencies involved and the general public.

New York State Department of Health, Center for Environmental Health:

Overall the draft Policy is well thought out and provides a practical approach to conducting public involvement. The draft policy is not overly prescriptive and continues to allow flexibility in how public involvement is actually conducted. We use many of the same approaches and techniques and find them effective. We understand that any policy is only as useful as the agency's ability to implement it and, like you, we continue to work at making involvement an active part of our outreach activities.

Rutgers University, Cook College Center for Environmental Communication:

The EPA is to be commended for its investment in updating its public involvement (PI) policy. The policy reflects considerable insight into the importance of PI and the ways to increase its effectiveness. There is also much useful guidance about the "nuts and bolts" of PI while also providing a framework that allows for necessary flexibility in implementation... The draft policy is a good example of the state of the art of public involvement. I hope the agency not only endorses the policy but also implements it.

Doctoral student, University of Washington Department of Geography:

In general I think the policy includes several major elements of a sound and pro-active public involvement strategy. The Agency should be commended for updating this policy.

Shoshone Natural Resources Coalition:

The Draft Public Involvement Policy is excellent. Its emphasis and detail center on good communication and building plans with the communities being affected by any Agency work. It shows respect for the public the EPA is supposed to be SERVING. It should be made the rule-of-the-road for EVERY Agency employee, right down to the mail clerk!

American Chemistry Council:

We commend the EPA for developing this draft policy and welcomes future occasions to continue this and related dialogues with the Agency. Democratic decision making requires government officials to engage with and understand the views of various concerned stakeholders and the public at large. The Agency's draft Public Involvement Policy will greatly contribute to the achievement of this goal.

Environmental Defense:

On the whole, we are pleased with the Draft Public Involvement Policy and are happy that we

had the opportunity to comment on it.

California Department of Toxic Substance Control:

We have reviewed the draft policy, and find it gives a good, general foundation for public involvement. It provides an excellent credo for federal and state agencies, and gives the communities we serve the assurance that public involvement is a priority.

Antioch New England Graduate School, Department of Environmental Studies:

I wanted to indicate my enthusiastic support for the Draft Public Involvement Policy EPA is presently considering. First, I agree that recent progress in our understanding and experience with the practice of public involvement in environmental decision making makes a revision of the 1981 policy necessary. Second, I feel that the present draft as published in the Federal Register does an excellent job of incorporating the comments received from the 1999 comment period. This is truly a policy of which EPA can be proud. ....As a researcher who works in this field, I am very pleased to see EPA bringing this knowledge into practice. I firmly believe that such a policy will improve the quality of environmental decisions while also building in citizens a renewed sense of confidence in EPA's commitment to democratic policy making. I congratulate EPA on this exceptional draft policy and encourage it be accepted as a Final Policy as well.

Western States Water Council:

The Council agrees that the concepts outlined in the Draft Public Participation Policy are good policy for public participation.

Citizen #56:

Overall, I think that the Draft PIP is a good policy that represents a balance of competing interests. If EPA officials actually try to comply with the Draft PIP, they will necessarily have to invest much effort. It could lead to better decisions, it could lead to more people having the perception that EPA is actually concerned about what they think on particular issues, but it will not be easy.

St. Regis Mohawk Tribe, Environment Division:

All in all, EPA through this draft policy identified, comprehensively, the components necessary to engage the public to become part of environmental solutions within their respective communities. It is the hope within Indian Country that EPA remains committed to reaching out to minority communities across the board. It will take a more concentrated effort on EPA's part to make this draft policy a reality within these smaller communities. ...Overall, this draft policy covers all the possible mechanisms that can be utilized to involve the public.

Louisiana Department of Environmental Quality:

...the LDEQ offers no substantive objections to the draft policy and supports EPA's effort to modernize its public involvement policy.

Wisconsin Department of Natural Resources:

I commend the agency for developing the draft policy and its sincere desire to respect the public's legitimate role in the development of policy and environmental protection decisions.

McNulty Group:

Certainly the original EPA Public Involvement Policy and related procedures served the EPA, the states, and the public well. Much of what we did in the eighties and nineties with public involvement in New York State was based on the principles of the EPA public involvement program. I concur with the decision to build upon the foundation you have in place rather than start "from the ground up."

Sierra Club, Three Rivers Project, Piasa Palisades Group:

We are supportive of the initiative of the Environmental Protection Agency to involve the public in the updating of policy that will provide guidance for the Agency to more thoroughly involve the public in their regulatory and program decisions.

City of Dallas, Texas Department of Environmental and Health Services:

USEPA is to be commended for implementation of the 1981 Public Participation Policy and the current revision of that policy. The draft Public Involvement Policy is a very detailed document which wisely states its purposes and sets specific goals to enhance and encourage public involvement.

Pennsylvania Department of Environmental Protection, Policy Office:

supports updating the Policy and commends EPA's commitment to promote meaningful public involvement in its decision making.

Florida Department of Environmental Protection, Division of Water Resource Management:

The Policy reflects much time and consideration on EPA's part towards accomplishing the statutory mandate for public involvement. EPA deserves commendations for a thorough review of the needs and processes for public involvement and the forward movement of this updated initiative.

American Water Works Association:

AWWA supports EPA revising its Public Involvement Policy as detailed in the December 28, 2000 Federal Register notice (65 FR 82335). The 19-year old policy clearly needs updating. We value the Public Involvement Policy because stakeholder meetings are an important opportunity for us to provide meaningful information to the EPA.

Environmental Defense:

While we commend EPA for re-evaluating its Public Participation Policy, and its increased commitment to effectively enact it throughout the Agency and in the States, ....

Citizen #53:

I am very excited to hear that the EPA is working to draft a public involvement policy. An effective policy will promote the most functional solutions to environmental degradation, because the citizens most invested in their environment will be able to provide their

perspective, voice their concerns, and propose the most practical solutions.

Georgetown University, Government Department:

First, overall this is a thorough and vital attempt at further institutionalizing public involvement in EPA's environmental decision making. I applaud the efforts.

Sierra Club, Committee on Environmental Justice:

Nevertheless, in a most general way, the Sierra Club applauds the effort to establish guidance on such an important component of environmental decision making.

Several of the comments below raised concerns about EPA's implementation and enforcement of the Policy. These and other such concerns are addressed specifically in the section on "Responsibilities for Implementing the Policy" of this response document. The Framework for Implementing EPA's Public Involvement Policy released concurrently with the final Policy lists specific actions EPA intends to take to carry out the Policy. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this Framework. In addition, the Final Policy clarifies the roles of regulatory partners involved with EPA's decisions, addressing issues such as those raised in some of the following comments.

Golden Gate University, Environmental Law and Justice Clinic:

We would like to begin by commending you on the thorough and comprehensive nature of the Draft Policy. We are pleased to see that the EPA recognizes so many of the environmental justice concerns that can arise throughout the public participation process, and is taking active steps to address the situation. There are a number excellent strategies set forth in the Draft Policy, that if implemented, would truly benefit the public.

....In conclusion the Draft Policy does an excellent job of detailing the need for increased efforts on the part of EPA to elicit and incorporate public participation. It also lays out creative and effective strategies for enacting positive change. However, all these intentions are only meaningful if the Policy is actually implemented and enforced.

As it stands now the Draft Policy is not legally enforceable, but is instead, "the EPA's statement of its strong commitment to full and meaningful public involvement in Agency activities."

However, because the policy does not, "confer any legal rights or impose legal obligations on any member of the public, EPA or any other agency," the EPA is not actually being held accountable to the public. Unfortunately, in our experience, a strong commitment to the public is not always enough.

WPI:

I can't imagine adding anything to the policy. It seems very comprehensive and well thought out. My only concerns are related to "enforcement" of public involvement activities and emphasizing "plain language" versions of everything.

Columbia River Crab Fisherman's Association:

Overall policy is good, but how will this policy be implemented at the regional and local level?

Oak Ridge Site Specific Advisory Board:

The policy is extremely well written and sufficiently detailed to be useful; however, in the Board's opinion, EPA has made only limited implementation of its public participation policy in the Oak Ridge area.

Kansas Department of Agriculture:

EPA's policy promotes the concepts we hold dear at the Kansas Department of Agriculture. ...We agree that these are important commitments for EPA to make. We applaud EPA's draft language with some important caveats.

Guild Law Center and Michigan Environmental Justice Coalition:

While the Environmental Protection Agency ("EPA") has taken some important steps toward ensuring broad public participation with this policy guidance, more could be done.

National Governors Association:

NGA supports the purposes of the Draft Policy to ensure that environmental decisions are made with an understanding of the interests and concerns of affected people and entities, and believe it is appropriate that EPA adopt the Draft Policy for its internal procedures. However, NGA takes issue with the characterization in the Draft Report of state regulatory agencies as merely "stakeholders who provide input into EPA's decisions."

City of York Wastewater Treatment Plant, York Pennsylvania:

Implementation of the proposed policy should increase public awareness of Agency actions and improve public participation. A major concern and objection is that the policy fails to state a specific role for municipalities as part of the public.

Association of State Drinking Water Administrators:

In general, ASDWA finds that the proposed policy is well organized and places the issue of public participation within a reasonable set of parameters since it must be applied broadly across a number of environmental regulatory programs. However, ASDWA has identified several areas of key concern.

American Petroleum Institute:

We thank you for the opportunity to express our support of EPA's commitment to involve the public in its environmental decisions. API is equally committed to this principle.

Minnesota Pollution Control Agency:

The MPCA applauds EPA's effort to improve opportunities for public involvement in EPA decisions.

National Cattlemen's Beef Association and Idaho Cattle Association:

NCBA/ ICA supports EPA's efforts to involve and inform the public and to do it in a timely manner so as to promote public reaction and assistance in the process.

NCBA/ ICA supports and appreciates EPA's commitment to achieve greater public participation in the Agency's activities. Reaching out to the public provides the American people with a

sense of civic responsibility and greater understanding of the process as a whole.

Children's Environmental Health Network:

The Network commends the Agency for focusing its attention on these issues, which are key to the integrity of the Agency's activities and policies and, indeed, of our government itself... The Network recognizes and supports the EPA for increasing the role of public involvement in its decision making over time, and encourages the Agency not only to maintain but also to expand this role.

Association of State and Territorial Solid Waste Management Officials:

Despite our criticisms, we believe it is obvious that state waste program managers fully support the extensive use of public participation to achieve better environmental outcomes, and share the objectives of EPA's managers in this regard. We look forward to continuing to work with the Agency and its excellent workforce to improve our joint work with federal programs and to build the capacity of state waste programs for the future.

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## 14. RECOMMENDED BEST PRACTICES FOR PUBLIC INVOLVEMENT

The comments in this section recommend specific "best practices" used by other organizations or agencies for conducting effective public involvement activities. EPA appreciates these comments, and intends to include many of them in a database of public involvement materials and practices, and in public involvement training for EPA staff.

American Water Works Association:

Surveys and focus groups are an opportunity for the EPA to contact the public, in a neutral and controlled forum, to ascertain their opinions on environmental matters. The Social Security Administration has used focus groups successfully for a number of years and we encourage the EPA to model its survey and focus group efforts after the Social Security Administration's. As an example of using focus groups in the regulatory development process, AWWA conducted several focus groups as part of its efforts to provide input on the Consumer Confidence Report (CCR) regulation. The results of these focus groups were presented to stakeholders through EPA's CCR Workgroup under the National Drinking Water Advisory Council. A copy of the report from this project is enclosed as part of these comments. EPA also conducted its own focus groups as part of its efforts to develop the CCR regulation. The end result of all of these focus groups was a final CCR regulation with requirements for an easily understood report to the consumers.

**Response:** The Policy lists focus groups as one means for public involvement and consultation. The Social Security Administration's focus group work has informed EPA's customer satisfaction measurement activities, and focus groups as well as small discussion groups are often used at EPA to obtain feedback and input.

American Water Works Association:

The US Department of Agriculture (USDA) has a successful national outreach effort and we encourage EPA to pattern their outreach after USDA.

**Response:** USDA's Extension Service is an excellent outreach partner of EPA, and EPA agrees that it provides a good model for local outreach and service. However, because EPA's regulatory development functions use centralized staff, EPA's organization and geographic structure are not widely dispersed in small county level installations. Were EPA's primary function to provide localized information and assistance delivery, the USDA Extension model would be one to consider.

Pennsylvania Department of Environmental Protection, Policy Office:

Building on the concept of electronic access to proposed regulations and decisions, DEP has developed the Environment, Facility, Application, Compliance Tracking System (eFACTS) to provide Internet access to permit decisions and enforcement actions. The new eFACTS, developed jointly with the Compaq Company, displays facility permit history, the status of current permit applications and additional compliance information.

Pennsylvania Department of Environmental Protection, Policy Office:

DEP developed the "Public Participation in the Development of Regulations and Technical Guidance" policy. The policy establishes the ground rules for how and when the public can get involved in DEP's decision making. Some of the methods for obtaining public input include the use of advisory committees, advanced notice of rulemakings, public meetings and hearings. All proposed rulemakings are subject to a public comment period of at least 30 days and all comments received during that period are responded to in writing.

**Response to above two comments:** EPA recognizes that several states have their own strong public involvement policies. Such policies and practices should be included in EPA's public involvement best practices database, and states will have the opportunity to use and contribute to that database once staff have tested its usability.

Louisiana Department of Environmental Quality:

For example, Louisiana Revised Statute 30:2017 B(1) regarding public hearings on permits for facilities provides that citizens living within a two-mile radius of the location of the facility are granted speaking preference at public hearings. This law, a copy of which is attached hereto, has proven successful in the LDEQ's constant effort to offer greater outreach to the minority and/or low-income communities it serves.

**Response:** EPA appreciates the comment and intends to note it as a best practice of Louisiana when developing the best practices database.

Michigan Environmental Council:

We have appreciated the opportunity afforded by Region V to interested stakeholders to participate in and comment on the status of Michigan's Clean Water Act Section 404 delegated wetlands program, part of the Region's first audit of the program. We believe the stakeholder approach employed by the Region should be standard practice in EPA reviews of state programs. Region staff convened two rounds of meetings with several groups of stakeholders



to permit opportunities for informal comment, with formal comment submitted later in writing. However, the process has also demonstrated problems. The review has lasted more than two years, and for months at a time, stakeholders were not notified of the reasons for the delay or the status of the review. EPA should set forth procedures to assure stakeholders are periodically informed of the disposition of their comments and the status of state program reviews.

**Response:** EPA appreciates this comment and shared it with the EPA Region 5 office. EPA agrees that informing participants about the feedback process and providing feedback to the participating public is important. The Policy suggests in the "Review and use input, and provide feedback to the public:" *Agency officials should briefly and clearly document consideration of the public's views in responsiveness summaries, regulatory preambles, **environmental impact statements** or other appropriate **documents**. This should **occur** at key decision points."*

Wisconsin Department of Natural Resources:

EPA can continue to promote working with community groups, allowing flexibility for locally-tailored solutions, and fostering training and learning. This is an area where other fields have been leaders: social services (such as broad community health initiatives, community policing and justice) and in natural resources management and planning. Those fields may have something to share with the environmental protection community.

**Response:** EPA appreciates the comments. Informal benchmarking with professionals in these fields does occur, but not on a large scale with findings broadly shared. As EPA creates its best practices data base, we intend to seek relevant information from fields beyond environmental protection.

Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit,  
Hazardous Materials and Waste Management Division:

I am involved in the Rocky Flats Environmental Technology Site cleanup and because of the level of participation and education of our stakeholders, we are required to work very closely with them. In order to manage the volume of materials of interest to the stakeholders, yet keep all information readily available to anyone who might be interested, we have shifted our emphasis from general meetings and mass distribution of documents to extensive use of the Internet and focused technical work groups. Currently, most correspondence and documents available for review can be accessed through the RFETS web site, and State correspondence and comments are available on the State web site. Extensive linkage exists among Rocky Flats related web sites.

This approach at Rocky Flats was developed by the Public Participation Focus Group, a self selecting group of individuals from involved organizations with responsibility for public involvement, in order to tailor the information mechanisms used to the interests of the public. A copy of this guidance is attached. Section 3 describes the approach taken. (Attachment)

**Response:** EPA appreciates this advice concerning the use of the Internet and shared the attachment with the Office of Environmental Information. The Policy encourages appropriate use of the Internet, but it also recognizes that the Agency should use other means of communications to reach those who do not have Internet access. Further, EPA intends to

include the ideas from this comment and the attachment in public involvement training materials.

Citizen #90:

I was not supplied with a readily available link to e-mail back a response. I would suggest that most people interested in this are short on time.

**Response:** EPA appreciates the comment. EPA intends to include in training materials the suggestion to provide a URL and e-mail response address in public notifications. For the draft Policy, both were included in all electronic publicity that EPA sent as well as in the Federal Register notice. Such information may have been omitted as the notice was subsequently forwarded.

Environmental Council of the States:

Many governmental agencies are currently experimenting with new processes to ensure that meaningful public input is encouraged and captured. For example, the Pennsylvania Department of Environment has created a web site called eFACTS (Environment, Facility, Application, Compliance Tracking System) where information on pending permit applications is available, and individuals can register to receive notification of activities in specific jurisdictions.

**Response:** EPA appreciates this advice concerning the use of the Internet, and shared it with the Office of Environmental Information, which develops the Agency's Web and information product guidance.

Louisiana Department of Environmental Quality:

The EPA should review existing public involvement policies, rules, regulations, and laws of states, tribes and local governments to identify and incorporate any existing measures that could be incorporated into the EPA's public involvement policy. Indeed, many state, tribal, and local governments have developed highly effective public involvement measures that could easily be melded into the EPA's public involvement policy.....

The EPA should consider implementation of Louisiana- developed Environmental Justice panels. Additional information regarding these panels is enclosed.

**Response:** EPA appreciates the comment. As EPA creates its best practices data base, we intend to seek relevant information from other federal, state, tribal and local governments on public involvement policies, rules, etc. The implementation of Environmental Justice panels is outside the scope of the Policy. This comment and the attached information were forwarded to EPA's Office of Environmental Justice.

ACES, Inc.:

As an example, in MADEP has a PIP (Public Involvement Program) whereby 10 or more citizens can request a PIP; it requires periodic public meetings at which the PRP is required to explain the status of their project. The potential public comments and questions insure improved documentation since the PRP knows we are "looking over their shoulder".

**Response:** EPA intends to include the Massachusetts Department of Environmental Protection's information in its best practices data base.

Doctoral Student, University of Washington, Department of Geography:

I recommend adding a more detailed discussion of performance metrics. The Hanford Openness Panel - a broadly representative group of active Hanford Stakeholders and Tribal Representatives - developed recommendations in this regard that might be useful to the agency. Please see Appendix 14 of the 1999 Hanford Openness Workshop Report <http://www.hanford.gov/boards/openness/trac-0828/pdf/appendix14.pdf> for details. The full report is on line at <http://www.hanford.gov/boards/openness/trac-0828/index.html>.

**Response:** EPA appreciates this reference. EPA's Public Involvement Policy Evaluation and Accountability Task Group reviewed Hanford's metrics when developing sets of measures for EPA to use to evaluate its various public involvement activities.

Wisconsin Department of Natural Resources:

We appreciate the length of the comment period as it allowed for a thorough study of the document [the draft Public Involvement Policy] by our agency.

Los Angeles County Sanitation District:

We have attached an example, selected at random, of how the South Coast Air Quality Management District responds to comment letters submitted on the environmental analysis that accompanies most rulemaking. As you can see (Attachment 1), the paragraphs are highlighted and responded to individually in the ensuing pages. Where comments are redundant or close to those of other commenters, the author is referred back to a previous response given to an earlier commenter.

The Federal Register, as comprehensive and as well done as it is, is not the user-friendly device it could be in terms of enlightening the common person. It appears to be written and edited for the most part by attorneys for regulatory professionals. While many rules as of late are being written in straight forward and clearer language than has been past practice, the background explanatory text is not and sometimes it is difficult for the common citizen to follow.

As an example suggestion for possible improvement, we are attaching an excerpt from the California voter's pamphlet (Attachment 2) that every registered voter receives around election time. Each initiative, which proposes to change the state constitution, receives an analysis from the legislative analyst that is fairly concise, unbiased and understandable. This is followed by arguments for or against the initiative by identified proponents/ opponents. The actual legalese/ changes to the state constitution text are included in highlighted and strikeout format at the back of the voter's pamphlet for those who wish to draw their own conclusions.

Washington Department of Ecology, Nuclear Waste Program:

It has been our experience that defining a time frame within which the agency will provide information is helpful and helps avoid miss-communication. For example, the Tri-Party Agreement Community Relations Plan states that the three agencies will strive to include stakeholders "30-45 days in advance" of the beginning of public comment periods. This provides a guideline for both public involvement staff and technical staff for preparation of materials for distribution, and helps reduce conflict over when stakeholders can expect to receive information. This helps reinforce our commitment to involving stakeholders early in the decision making processes, thereby strengthening our stakeholder relationships.

Georgetown University, Government Department:

For a further idea of how such a program could be structured, you may want to look into an innovative program being done at the local level in Arlington County, Virginia. The program, "The Arlington Neighborhood College," attempts to encourage underserved members of Arlington to become a part of the larger group of citizens actively involved in civic matters here in their community --- by giving these citizens skills through training exercises in small-group and large-group settings.

**Response to the above three comments:** EPA appreciates these best practice ideas.

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## 15. GENERAL COMMENTS ON PUBLIC INVOLVEMENT PROCESSES

The comments below describe experiences with public involvement activities - either with EPA or other agencies. While EPA appreciates these comments, since they give valuable information about public involvement issues, such comments are outside the scope of the Policy. Where possible, these comments were shared with the relevant offices within EPA, and EPA intends to incorporate many of these examples in public involvement training for EPA staff as examples of lessons learned.

### Comments Shared with EPA Regional Offices

Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee, Inc. The [Oak Ridge] CAP has interacted extensively with representatives from EPA Region 4 regarding DOE Environmental Management projects. Our members concur that Region 4 does not act within the intent of the Public Involvement Policy with respect to local stakeholders... Further, we repeat a request (see enclosed letter to John Hankinson dated October 26, 1999) that Region 4 place a field office in Oak Ridge, as the current system of EPA being physically removed from the stakeholders has resulted in difficulties in communication and understanding of the community's desires with respect to remediation activities on DOE's Oak Ridge Reservation (ORR).

**Response:** This comment was shared with the EPA Region 4 office.

### Washington State Department of Ecology, Toxics Cleanup Program:

Russian, Hispanic and Hmong communities eat contaminated fish from the Spokane River, which is part of the Coeur d'Alene Basin/Bunker Hill Box Superfund site. EPA has not done outreach to these communities. The local regional health district has taken responsibility to do this work. These communities have NOT been represented in any EPA public meetings nor in the decision making process.

**Response:** This comment has been shared with EPA Region 10 and its Boise, Idaho, field office.

### Washington State Department of Ecology, Toxics Cleanup Program:

EPA project managers and Community Relations staff became physically separated from each other in their office environment. This created a situation where it became difficult for these two groups of people to keep in close contact during critical parts of the clean up process. This resulted in EPA Community Relations staff not getting timely information for them to easily do

their jobs. Sometimes, technical staff would bypass the Community Relations staff and write their own fact sheets - this happened in the field offices more frequently. Problems that stemmed from bypassing Community Relations staff included:

- \*Timeliness of Community Relations staff involvement.
- \*Community Relations staff not kept up to date on site issues.
- \*Lack of understanding by some technical staff that the general public may not understand scientific terms and exponential numbers.
- \*EPA attorney's insistence on complex technical information in public information sheets.
- \*Insistence on Proposed Plan "fact sheets" that often numbered in the 20 - 35 page range.
- \*Comments from EPA project managers that layman terms would be like writing "coloring books for the public".
- \*EPA Community Relations staff kept out of the loop on site cleanup activities and sometimes absent during the beginning of the public involvement process.

**Response:** This comment was shared with EPA Region 10 and the headquarters Superfund Office.

Washington State Department of Ecology, Toxics Cleanup Program:

The EPA is working on transborder issues with the Bunker Hill Box, Coeur d'Alene and Spokane River Basin Superfund mining contamination. A comment period which was created for the Feasibility Study, ended on April 12, 2001. On April 16, 2001 a document entitled "Progress Report on the Proposed Cleanup Plan" was distributed to a select group of Idaho citizens, outlining proposed cleanup actions. This document indicated it was taking into consideration the views of citizen groups both in Washington and Idaho. However, the Washington Citizens Advisory Committee only submitted comments at the deadline of April 12, 2001. It does not appear a member of the WCAC was involved in the subcommittee which developed the "Progress Report". It is difficult to imagine their comments were considered in a meaningful way as part of developing the draft report.

Additionally, EPA has been significantly influenced by the political and citizen climate in Idaho versus the political and citizen climate in Washington. The contamination affects both states, however, Washington citizens have expressed concern that Idaho citizens have been given preferential status for receiving information, getting EPA sponsored presentations, etc. Washington citizens often feel they must "fight to obtain information." This is neither meaningful nor effective public involvement.

**Response:** This comment was shared with EPA's Region 10 office.

CLEANUP: [Note that the name of the site is not mentioned in the comment letter, but is likely near Sugar Creek/Independence, Missouri]

From our experience, Region VII EPA has not achieved the above stated commitment [to early and meaningful public involvement] at this site. The refinery has been closed for almost 20 years. In that time frame, EPA has never hosted a single public meeting. The two meetings here regarding the pollution have been jointly hosted (including the responsible party as a CO-host), in an Open House style. People do not benefit from this style of meeting as they cannot hear all the questions and answers posed by all attendees.

Since any clean up of this site [unnamed] will take years to accomplish, potential future residents are not included as individuals who may be affected by chemical exposure inside

homes. EPA has a responsibility to protect the public's health. The responsible party in this instance has bought out nearly 100 homes near the refinery and they plan to sell the vacant homes to people who may not be economically fortunate. EPA should not allow the polluter to sell a house when they know it is contaminated. Also, EPA should not allow a highly contaminated area (fronting the Missouri River), with a less stringent clean up for air, water and soil. Since citizens are the biggest stakeholders, they are more interested in seeing their community cleaned up so that it remains whole, and at this juncture EPA ignores our input. EPA does not make an effort to include citizens in their onsite activities and makes every effort to include the polluter in everything they do. Citizens should not feel like EPA is their enemy.

**Response:** This comment was shared with EPA's Region 7 Superfund staff.

Columbia River Crab Fisherman's Association:

Having given general comment I will herein give a specific example of an extremely poor public relations and responsiveness to a proposed rule making related to designation of dredge disposal site at the Mouth of the Columbia River on the Washington - Oregon border by a responsible EPA official that resulted in public outcry that is still ignored today.

- 1) Washington State legislature attached encumbering language to state matching funds for Channel Deepening that states funds cannot be expended until an agreement that protects the crab industry is found.
- 2) Oregon State legislature is currently attaching encumbering language to state matching funds for channel Deepening requiring public hearings before funds as spent.
- 3) States of Washington and Oregon both denied water quality and federal consistency to EIS request.
- 4) CZMA requirements of project completely ignored and actively suppressed.
- 5) RFA requirements of SBA short circuited and actively suppressed.
- 6) Multiple agencies in the two states advised compensatory mitigation for severely impacted marine habitat and resources even refused discussion by EPA.
- 7) Formation of Ocean Disposal Taskforce seen as a joke by participants.
- 8) Refusal to apply EO 12898 to actions affecting the county with the lowest median family income in the State.
- 9) This list could go on with equally valid examples, but enough are presented to make the point.

With this much public and agency outcry about a proposed rule making EPA policy is a miserable tragic failure in Region 10, in much need of revision.

**Response:** This matter was brought to the attention of EPA Region 10 and the EPA Office of Water.

Oak Ridge Site Specific Advisory Board:

The policy is extremely well written and sufficiently detailed to be useful; however, in the Board's opinion, EPA has made only limited implementation of its public participation policy in the Oak Ridge area.

Of particular concern is EPA's lack of a resident field representative in Oak Ridge, which seems at odds with the significance of the Oak Ridge Reservation's environmental remediation projects. A number of stakeholder groups and ORSSAB committees meet regularly throughout the month to discuss ongoing remediation projects, plans, and decisions. Although the

ORSSAB monthly meeting is attended by a representative from EPA Region 4, long-distance communication with these other groups and committees is not a satisfactory substitute for face- to-face meetings with stakeholders.

Additionally, although EPA is routinely copied when comments are solicited by the U.S. Department of Energy (pursuant to the Federal Facility Agreement for the Oak Ridge Reservation), EPA does not respond directly to the comments, which is clearly an expected action implied in the draft policy.

**Response:** This comment was shared with the EPA Region 4 Office in Atlanta.

Guild Law Center and Michigan Environmental Justice Coalition:

Many community members in Michigan perceive MDEQ decisions to have been made based on the influence of the regulated industry, prior to opening of public comments.

**Response:** The comment was shared with EPA's Region 5 office in Chicago, which works with the State of Michigan.

Citizens Against Rails-to-Trails / Citizens Advocating Responsible Treatment:

These comments are submitted on behalf of our citizens' group, C.A.R.T., which has been identified as a "stakeholder" in the north Idaho Coeur d'Alene Basin cleanup. We, as individuals and collectively as a grass-roots organization, have been trying to work with EPA and the other Governments for years, and we have serious concerns related to EPA actions in the Basin, as well as to the lack of real, honest, inclusive public involvement. Our experience is that EPA "talks the talk," but agency interest in "real" public involvement is minimal. In addition, it appears to us that EPA "uses" citizen groups to further their own agendas, rather than to truly involve the people most affected by their decisions. We do not think that EPA takes seriously our voiced concerns, nor are we confident that EPA protects our welfare and our environment. It has been our direct and documented experience that EPA apparently chooses to "control" public involvement, rather than opt for real, honest stakeholder input which may involve hearing (and, perhaps, doing) things that may run counter to EPA agendas but are, nonetheless, sound, scientific, valid responses based on direct landowner or stakeholder experience. We base this observation on the fact that EPA apparently refuses to adhere to the stated "Principles of Customer Service" espoused on EPA's own website, which state that written requests will be addressed within 10 working days. This has NEVER happened for us, and currently, EPA has chosen to redirect our serious concerns and questions to the PRP, Union Pacific Railroad, rather than to protect our welfare and our environment. This is unconscionable! In addition, EPA has created a cumbersome process whereby questions are accumulated and then discussed among the Governments (in a closed conference call, with no stakeholder participation, no notes, no accountability to the public) once a month. After this, "answers" (often double- speak) are sent, over a month later (if at all.) In one case, it took 9 months and legal intervention to get EPA to answer stakeholder questions submitted at a public meeting (hosted by EPA) called by the Department of Justice specifically to answer questions! In addition, for at least the past two years, EPA has refused to answer directly our basic questions. EPA has, rather, been evasive or has chosen to "hide" behind "negotiations" which

excluded us, stakeholders and the public, from any voice in the decision process which can change forever our use and enjoyment of our land. This is unconscionable! EPA's evasive and general answers to our responses to cleanup-related documents has been cursory, at best. EPA personnel have, on several occasions, apparently been upset by free speech. First, at the August 19, 2000 EPA Ombudsman hearing in Coeur d'Alene, to which C.A.R.T. was an invited participant, an incident occurred involving Mike Gearheard, Region 10 EPA and a C.A.R.T. member. The incident was reported, an affidavit made, and only after repeated attempts to find out what was being done, did we receive "word" that the EPA Inspector General considered the matter closed. We do not consider the matter closed, and we will continue to protest Mr. Gearheard's inappropriate behavior, as well as the way the incident was handled by internal EPA management. Second, at a public meeting, Mary Ann Deppman made (what we consider) inappropriate comments to a C.A.R.T. member and then came up to "apologize for saying something that may have been out of line" after the meeting was adjourned. The point is: EPA personnel appear to try to stop free speech in public, and then there is no accountability for those actions. In our situation, certainly EPA did not "create early and continuing opportunity for public involvement, nor did EPA "ensure that environmental decisions are made with an understanding of the interests and concerns of affected people and entities." Rather, EPA waited until the proposed Mullan-Plummer 72-mile recreational trail was a "done deal" before even acknowledging our specific concerns. In the rush to "bite the recreational carrot" offered by the PRP Union Pacific, EPA apparently drove negotiations (as evidenced by the pages and pages of "secret and confidential" communications listed on the Administrative Record). EPA currently "pretends" to have come to the project "late" (as stated by Mike Gearheard and Cliff Villa at a recent meeting with us), yet EPA was there, in the background, the entire time, since the earliest negotiations for the proposed trail, in the early 1990's. EPA endorsed from the beginning a plan (the EE/CA and subsequent documents) which covers contamination and creates double-standards for cleanup within the Basin. EPA endorsed a plan which invites the public to recreate in contaminated areas to which they would not otherwise have come! This is unconscionable, and the 10-foot wide strip of asphalt proposed for the trail does not begin to address the contaminants which will be left in place. "Foster mutual trust?" How do "iterative" processes whereby EPA conducts business on conference calls, with no accountability to the public, foster trust? How can the astounding number of "secret and confidential" documents (available to all state, Tribal, government officials but NOT to the public!) generate trust? How can holding meetings where there is absolutely no information disseminated foster trust? How does changing plans without informing the public foster trust? How does generating huge volumes of clumsily written (often techno-speak) double-talk foster trust? If EPA really wanted to foster trust, EPA could do so, and the first step would be to make EPA accountable to the people who pay their salaries: the tax-paying public.

"Actively develop options that address the conflicts in underlying issues expressed by disagreeing stakeholders, thereby seeking to facilitate discussion....." In our case, EPA appears to have done just the opposite. First, our stakeholder concerns have NEVER been acknowledged by EPA, and it is our belief that EPA has, rather, actively given or used information from other stakeholders against us. We base this complaint on the fact that we have had only one face-to-face meeting with EPA "officials" in the two years that we have been participating in Basin cleanup issues. In fact, that meeting, arranged at Chuck Findley and Ann



Williamson's convenience for last April 4, was not even attended by them. They even tried, at the last minute, to cancel the meeting the day before it was to be held. And, those EPA personnel attending the meeting were not able to answer our legitimate questions about TAS (Treatment As State), nor were they informed enough to answer serious questions and concerns about wetland cleanup double standards, as well as other issues we have tried for years to address.

Your Draft PI policy states that "EPA particularly seeks comments on how the Agency can improve involvement for minority, low-income and underserved populations and how it can encourage involvement opportunities in programs delegated or authorized to states, tribes and local governments." Toward that end, we offer the following comments:

--Our community of stakeholders includes all of the above populations, yet EPA appears to actively ignore or circumvent us.

--Our community is most definitely "underserved" in the sense that we have no clear voice in the decisions which impact us directly and permanently.

--Our community is underserved by the fact that decisions are made for us in spite of our active attempts to be heard about the contamination which will be left in place.

--Our community has been circumvented in favor of the state of Idaho, the Tribe, and some parts of local government. We have been excluded, to our detriment, and we hold EPA accountable as the protector of the public and our environment. EPA must STOP making decisions for us, the public, the people who pay their salaries! EPA must be required to post notices of meetings, discussions, publications in very public places (not like the one ad, run once, buried in the legal section of one Basin area newspaper announcing the call for TAS comments.) EPA must stop creating layers of bureaucracy (written and within communication systems) which effectively keep us, the public, from the very involvement EPA purports to invite!

In closing, we continue to be shocked, saddened, even outraged at the apparent political game-playing and back-scratching that seems to permeate Basin cleanup. We are dismayed by the apparent struggle among the Governments (State of Idaho, the Tribe, EPA) for control of Basin waterways and cleanup of those waterways, instead of honest, citizen-based consensus building to reach solutions. We continue to protest EPA's policy which, in reality, creates the pretense of public involvement, but does not allow the reality. In short, EPA non-public involvement has, we believe, allowed abuse by the Governments of Railbanking legislation, resulting in the proposed 72-mile recreational trail which covers contamination left by Union Pacific and creates a dangerous precedent for future similar projects. EPA's lack of genuine public involvement is one factor that has made our citizen group hire lawyers, and we believe our lawsuit is just one of many to come.

**Response:** This issue was shared with EPA's Region 10 and Superfund offices.

**The following 15 comments were generated at a public meeting on public involvement issues convened by EPA Region 6 on July 21, 2001 in San Antonio, Texas.** The regional office submitted the resulting public comments from that meeting to be included as public comments on the draft Public Involvement Policy. The recommendations from these comments regarding the Policy are included in other sections of this Responsiveness Summary. The following comments do not relate to the Policy, but express opinions regarding

the public involvement and cleanup processes associated with Kelly Air Force Base. EPA Region 6 is responding to these issues.

Citizen #64:

Please drop your (EPA) opposition to allowing members of the Kelly RAB and public to attend base closure team meetings.

EPA isn't following its responsibilities. The BCT is making all the decisions. The RAB has asked to take part in those discussion with BCT, but the answer was NO. We asked to just sit in & again - NO. EPA agreed with that decision. On Nov. 4 1998 the BCT concluded it was better not to have the RAB in attendance. Why did EPA agree to keep us out? We live here. We are affected by their decisions. We need to have input.

Citizen #65:

Thanks for all of you being here. EPA mailed thousands of cards I got 3 of them about today's meeting. Thanks to all the Congressmen for all the help they've given. I'm a member of RAB and Sect of Center for Env. Justice. I may not say nice things about EPA

The purpose of this meeting is to increase public participation. They can do that by holding meetings in the contaminated neighborhoods. (98% are Hisp homes) by Kelly or R &H. EPA has known about this for years, but hasn't listened to our cries to clean up our toxic homes. When will EPA do something about it? EPA has known for 20 years but hasn't done any cleanup. Where is EPA & EJ. Why have they ignored us. Why wasn't this meeting held in the middle of the contaminated site? This is miles away. When will EPA involve the contaminated communities? KAFB has spent 200 million dollars cleaning the base, but not the neighborhoods. I hope the outcome is positive. We've had too much [atole con el dedo] [like eating pudding by just dipping a finger in - too slow a process]. I hope we will get a response from EPA & EPA HQ as a result of this meeting.

EPA Region 6 has never met with the community, contaminated by Kelly AFB since the 1980s. To this date there is no plan by Kelly AFB to clean the neighborhood and EPA has never asked TNRCC to take Kelly to court.

Community Health and Environmental Justice Center:

Thank you for inviting us to this meeting, even tho its far from Kelly AFB - EPA is funding ATSDR - and the reports ATSDR gives are flawed. They really do not show the reality of our illness and the severity of contamination in our communities. ATSDR always sides with the A.F. Base and Bevar Metro Health District. We need the land cleaned in the shortest time possible like 6 years and our illness taken care of, that our pain and despair in our families and new families that are buying the houses that are still being building still over the contamination. We live on contaminated ground & drink water contaminated with thalium and we have gone a long ways and I have been following and reporting all this since 1989. I was on the RAB but didn't see progress. I am president of Community Health and Environmental Justice Center. You are funding ATSDR but they came up with a study that's flawed. We would like for them to come out with accurate reports. The Air Force was giving erroneous readings on water. You need to stop pain & despair of families living here. They are continuing to build houses on contaminated land. We had been drinking water for 3 years when we found out it had thalium.

We need more attention & more help. I have been on a Japanese TV program & on a program with Russian prime minister. It's a shame when agencies cover up for each other.

Citizen #67:

Some hazard exist as when Civil Service was in place I witness first hand accounts and documents to prove it. And still no clean up plan exist for Kelly A.F.B. Military seems to be exempt from its responsibility.

We're the ones who are going to make a difference. I was employed on base with Boeing- I speak up. Nothing has changed. EPA is here & say they want to help. In Dec. a fuel spill took place. Fueled up twice 6,512 gals then 7,950 gals. They just guess at the quantity instead of checking the tank. They reported 10 gallons spilled only. I reported it to OSHA but E-mail lost due to a virus. TNRCC rubber stamped what the fuel guys said. 3-4 weeks later our water went brown. They say don't worry about the aquifer- it can't be breached. The aquifer can be breached. EPA should check these records 150 gal spill went down the storm drain. They didn't report it (since the creek was dry they said it wouldn't hurt), but what about when it rains. It was cleaned up. Another problem was that there were all kinds of birds. Boeing threw abutrol throughout facility with no warning. The dead birds were being scooped up in droves. Screamed at [??] They denied it was poison they said the birds died because they were starving. I gave this information to Fish & Wildlife, but they called the supervisor and Boeing had time to remove all the dead birds. They all want to sweep violations under the rug. Things like this happen all the time. We have to join together to make a difference. The military doesn't want to be held responsible. My wife, parents are sick. My wife bleeds through the colon when she menstruates. We all drink this water. My employer supplies bottled water to cover their butts. This is our only water source and it's being polluted.

Citizen #68:

There are lots of concerns about Kelly AFB. Is the AF going to do what is right? We are very concerned because EPA doesn't seem to be looking at the contamination outside the gates of KAFB. EPA can help by being independent from the Air Force & serving in a checks & balances function. They should listen more to the Thompson Neighborhood Assoc. EPA can say there are other ways than the AF's way and exert their influence. They have been contaminating the Base since 1917. We need a check & balance- EPA should have independence from the AF. EPA should ask, "Is this the right way to do it?" This will help a lot in the future cleanup. Bergstrom AFB spent lots of money cleaning it up. We are concerned as to why it wasn't designated a Superfund site.

Citizen #60:

Thank you all for coming from EPA. It's a rare opportunity you are giving us to express our concerns. The Policy talks about "meaningful" participation. This is bureaucratic lingo. "Meaningful" to whom? The community wants to feel that their participation bears fruit - that you truly do listen and that there is a positive result because of our input. This is POWER. If people don't see that participation, commenting, protesting, etc., yield some result, they won't become involved, or they will stop whatever involvement they have had. If there's nothing to show for their effort, they won't come back. You have a group here I see all around. They may

be losing hope. They must feel they can make a difference. They won't bother if you keep asking for input but then you don't listen or go on with business as usual.

Kelley AFB is a good example. They [community] are educated on the issues, but EPA & the AF are allied with big interests, and the people feel they have no reason to participate. This is one example to show that the community made a difference. If you can't do it with Kelly, you'll have a hard time getting participation elsewhere.

National Image:

I'm from the Christ the King parish. I'm also the Regional Director for Nat'l Image. Thanks for the opportunity you've given us to meet with you and tell you what is on our minds. It's very important to have this forum. Kelley problems will be around a while, so we need EPA even more. What will be the next base closure? Ft. Sam Houston? Randolph? Will they close it down? If so, will you all have learned from Kelly? Contaminated communities are left behind by the U.S. government, and in San Antonio, it's mostly Hispanics who have been affected. EPA needs to be more active in dealing with this. I see all sorts of people in all walks of life and most people are concerned about pollution. Recently I went down to Mercedes to some *colonias* down there. Hispanics need to be heard because of our issues. It seems strange that there's no Hispanic in EPA's Office of Civil Rights & only one in OEJ. We need to be able to talk to you. It's imperative that the government find out how to communicate with us & very necessary to bring in more Hispanics in to work in EPA. You wouldn't have as big a problem communicating with the Hispanic community if you had more Hispanics working for you. We are literally killing some of our people with contamination. I hope you understand that when the government isn't concerned about the lives of its people, something is wrong and it's got to change.

I was talking to Hector Gonzalez. Lots of health agencies have been involved in the Kelly situation. Talking with the representatives of the Congressmen here, and one solution could be possible. It would be a good idea for EPA to work with both congressmen [Morales-is also a representative] to push for a resolution to get the Center for Disease Control to analyze situation. In the case of ALS [Lou Gerhig's disease] - there are some 80 cases in the Kelly area. The CDC is known for being objective. Our congressmen can push congress to investigate through CDC - They can push for whatever testing they need to do to see what the real problems are. I would ask Mr. Morales to take this back to Ciro Rodriguez. We want the sampling done where we know there are problems.

We recommend that we go through our Congressional offices to work with EPA to find solutions to these health problems and other contamination problems in the Kelly area.

Citizen #70:

I'm an intern with Southwest Workers Union. I live near Kelly. Why isn't EPA having hearings on Health problems? [She read written statement - "10 Reasons Why Are We Protesting Kelly AFB?" and "10 Reasons We Are Protesting the EPA?"]

Citizen #71:

I live & work in Kelly AFB. You want us only to use Kelly as an example of communication. Kelly is in the top 10 in contamination. What about a spill or accident? Inadequate assessments are being made. On the original health assessment, they used 10 zip codes, but

on the last one it was only on 3 zip codes. Why didn't ATSDR use the same 10 in the original assessment? There is a huge lack of trust with the government. This lack of trust is due to DELAYS. Everything takes too long. The screening done by Metro Health are a shaft, mistakes were made several times, on me, on my family and my friends. It is a sham that mistakes are being made when EPA is supposed to protect the public. Someone has to be responsible. I want to see what will happen to Camp Bulliss. If there's different treatment, I will be upset because a low-income area shouldn't get worse treatment than a higher income area.

Citizen #72:

I'm secretary for Environmental Justice Action for the SWU--This draft policy... Do they really have to wait for more comments? In May of 2000 SWU and others reached out to EPA. We went up to Dallas and met with R6 about Kelly issues, but especially about the communication between EPA and communities. R6 said they would keep us involved and informed. In June 2001 EPA came here for a Community Involvement conference here, but EPA didn't reach out to the public. It was invitation only and they kept us out. SWU protested outside, and then they let us in. We had to protest publicly to get EPA to listen to us. During some of our people's comments about our problems with Kelly, some of the EPA members were very moved by what was said about our health problems, etc., and they said they didn't know why SWU wasn't invited. One said that Kelly [cleanup?] is not in EPA's jurisdiction; however, in *Spring Valley*, Wash DC, an affluent neighborhood, EPA & DOD took aggressive action to clean up contamination due to a DOD facility. It seems that it's only in EPA's jurisdiction if contamination is in an affluent neighborhood. It's a very complicated issue laymen can't understand. EPA isn't responsive to people of color communities. EPA shouldn't shut the door & say it's not their jurisdiction especially when they are not consistent (if it's an affluent community it's in their jurisdiction). You can't close the door now on our participation. The goal of mutual trust won't occur when the only advice is take it [complaints about/blame for contamination?] elsewhere. This situation where EPA says take it up with the responsible parties makes everyone upset. Is the Military not accountable for environmental laws or not? They shouldn't be above the law. The public demands it be a top priority with EPA. Military must clean up their mess. EPA must insure environmental protection also for poor communities of color.

Citizen #73:

NEJAC outlined the importance of public participation with federal agencies. This model plan [NEJAC's] was developed in 94, but no agency tries to adhere to it. Example: 3 government agencies are responsible to close Kelly. Now there's a Title VI complaint because of the discriminatory effects related to Kelly. The BCT excluded people, and there's no public access to its meeting. Meetings & public hearings shouldn't be confidential. With people's work schedules they can't attend daytime meetings. Translation should be supplied. For example, the Greater Kelly Development Authority, the GKDA, the RAB and the Base Closure Team, the BCT are three governmental agencies responsible for the conversion of Kelly Air Force Base into Kelly USA. These three governmental agencies have outright ignored the model of Public Participation in their attempt to outreach to the communities. Other problems we have with EPA are Timeliness and follow-up - both are lacking. The need for interagency coordination is obvious, but ignored. This lack can have grave results. Contaminated properties were tested. ATSDR took from top layer of soil, even though the

property owners said it had been replaced some time ago. So no contamination showed up. Then ATSDR announces the soil is uncontaminated. Why should the public think it would be different. No honest effort was made to put it [homeowners' information?] into practice. Their concerns were brushed aside, thereby causing inconsistent results. Decisions have been made behind closed doors, and this is wrong.

National Organization for Mexican American Rights:

My organization addresses Hispanic employment, education, and civil rights, but we especially focus on employment. We were organized in Fort Worth, but have chapters in several states. We have worked with EPA, and they haven't done very well in the past. We were involved with the first Hispanic Stakeholders Meeting in San Diego in 1999. They have improved lately. They are beginning to make some sincere efforts to reach out to our community, so we are trying to help EPA. Hispanic groups are all trying to improve situation for Hispanics. We can't complain unless we are ready to step up & work to improve the situation. Now we are asked to provide input on public involvement. Later we will have to ask how they have implemented what we input. This is guidance, but groups like ours need to go & ask "What have you done?"

We think it's imperative to include our community in EPA decision making. It is all for naught if we aren't at the table. EPA needs high-level Hispanics in the Agency, and then you won't have the same problems communicating with us. If you want to communicate with us, we need to be at the table for our needs to be entered into the equation. EPA has failed to employ Hispanics in positions where they should have such as [EPA liaison] in the US Embassy in Mexico City, management in EPA's US/Mexico Border Office). If we put our comments on record, we can later hold EPA accountable. Will all the groups be given the document when it is finalized? Can a citizens' group be formulated to help advise? Why not have a meeting here in San Antonio for EPA to give us all kinds of information we need about issues here, as everyone has been asking about, particularly about Kelly. We need the straight story. Thanks for this good faith effort, EPA.

Citizen #75:

I have been struggling with everything here - more than 40 years - and with lots of sicknesses. All of this has happened here. One of my daughters has asthma, a son has \_\_\_\_\_ (unintelligible). I am thankful for those who have helped me, such as brother Chavel for cleaning up the contamination well. I suffered a stroke recently. It's important that everyone cooperate together. May God bless you all. Everything is contaminated. Sometimes the water comes out black [very dirty]. May God bless everyone and may we all continue to work together.

Citizen #66:

I applaud the decision of R6 to have this meeting here & Congressmen Charlie Gonzales & Ciro Rodriguez. We are all in this together. Creator expects us to work together & keep clean. Conflicting information makes it difficult to guide decisions here on the local level re: Kelly. We need to know if the plans for the cleanup are good or not. The plan is to promote development along the lines of NAFTA. We want EPA to share more information on Mexico. Accountability is important. Conflicting reports do cause a big problem. We must look at pollution prevention. Education - most effective place to deal with environmental problems - before they start. In

San A we have the wonderful blessing of the Edwards Aquifer. Growth is exploding on the recharge zone. We need help to contain the damage. Indigenous people lived here for thousands of years . We need to honor our birthright and continue living without harming the environment.

Citizen #74:

I'm a long-time citizen here. More & more people are coming to speak out. They have found more & more contamination - I'm a member of the RAB, represent my area - 38 years there. For the record. I'm Latino, Spanish descent - 1<sup>st</sup> language was Spanish. I still think in Spanish. I have helped the Republicans since '64. I speak often to City Council. Because the Republican Party was not very environmental I became a part of the Republic of Texas. Everyone is welcome in it, but must be a Texan, even if you moved here. Here's a Biblical story - in the year 1 common era 4026 BC it didn't used to rain. Then everything was green. The water underground kept everything green. The plumes watered everything. Now plumes rises and if there's contamination in the ground, as water comes up, it brings up the contamination. I went to A& M I'm 58 trying to learn more. I'm asking EPA. Latinos should push for the federal government to do their job. The plumes go under the Apache Creek area. I go to Austin & campaign for the people. I take off from my job to do that. We have to stick together. I hope Mr. Bush can help improve our problems here.

**Comments Shared with EPA Headquarters Offices**

Iowa Department of Natural Resources, Water Supply Section:

The single DBPR/IESWTR Implementation Meeting was held in Denver in February. While the location was accessible for most of the States and the travel costs were reasonable, the weather was questionable (fog canceled most of the incoming and outgoing flights the night prior to the meeting), and it was held during some of the peak snow ski season - so flights were less accessible and more costly than if the meeting had been held at a different time. The second example is the upcoming single national meeting on Capacity Development, which is scheduled for Seattle in May. It is in the far corner of the U.S., and while it is more accessible to some of the surrounding States, it results in excessively long travel times for many more of the States.

**Response:** This comment was shared with EPA's Office of Ground Water and Drinking Water.

International Association for Public Participation:

The EPA has been incorporating public participation for nearly thirty years. However, the Agency is no longer the leader it once was. Regulatory-driven participation requirements have overshadowed a comprehensive approach. RCRA permits are a prime example. By the time a permit review is subject to public participation, numerous higher level decisions are already assumed. Only a small number of highly interested and affected people are likely to respond to a call for comment on whether one foot or three inches is the better distance for barrels at a site that is already permitted for a set of contaminants.

**Response:** This comment was shared with the EPA Resource Conservation and Recovery Act program.

National Association Of Home Builders:

NAHB has over 850 state and local Home Builder Association in its federation and has found few of these groups have ever been identified as groups interested in EPA actions. This is true despite the fact that the construction industry regularly participates in EPA proceedings and is significantly affected by countless EPA actions.

...when EPA published proposed changes to its TMDL plan on August 23, 1999, it provided a 60-day comment period. This was simply not enough time to formulate a response to such a complex technical issue. In the ensuing public outcry, EPA did extend the comment period (twice!), but all the effort that was spent on securing the extension of time could have been used to formulate better suggestions and feedback on the technical merits.

...during the storm water rulemaking EPA formed an Urban Wet Weather Flows Federal Advisory Committee (FACA Committee), which established two subcommittees, including one on Storm Water Phase II. This subcommittee met a total of 14 times over three years; however, the format and leadership of the meetings were disorganized, ineffective, and not conducive to productive discussion. As a result, the subcommittees members' ideas, suggestions, and concerns were largely stifled, overrun by agency preconceptions, or tabled for later discussion that never occurred. In the end, the subcommittee never agreed on any aspect of the Phase II program, never provided a written report to the FACA Committee, and the FACA Committee never provided written advice and recommendations to EPA. In the end, this lead led to a report (and arguably a final rule) that was unfairly skewed toward the views of the majority of the FACA Subcommittee and not necessarily the public at large. In episodes like this it appears to the public that EPA is simply using public participation as a mere formality when its results are preconceived. This element of mistrust is particularly damaging to the public involvement process and impedes EPA's ability to develop consensus and support for its regulatory actions.

... NAHB has been dismayed, for instance, that EPA's proposed effluent limitation guidelines for the Construction and Development industry have been based on a survey of a mere six (6) construction sites. This is simply inadequate to fully grasp the unique character and complexity of all the various construction sites, and no amount of public participation "process" will overcome the technical deficiencies of the proposal. EPA staff should be sufficiently versed in the subject matter they are attempting to regulate so they can fully appreciate the complexity of the issues as well as scientific and technical information they must evaluate.

**Response:** These comments have been shared with the EPA Office of Water and with the Office of Cooperative Environmental Management, which manages Federal Advisory Committees.

Property Rights Congress of America, Inc.:

Review and revise the 111 key elements of the Clean Water Action Plan. In 1997 when then-Vice President Gore introduced the Clean Water Action Plan, the Notice of public meetings was published in the Federal Register on a Thursday, the same day of the first meeting (of only three meetings held nationally) that was held in Atlanta, Georgia. The second meeting was



scheduled for the next day, Friday in Columbia, Missouri. The third and final meeting was scheduled for Sacramento, California the following Monday. (I cannot find the FR Notice on the Internet now. Hopefully EPA can.) I lived in Missouri then and was able to attend the Columbia meeting. It was very well attended by members of environmental groups, specifically the Sierra Club, Missouri Coalition for the Environment, and the Stream Team. There was only one member each from Cattlemen's Association, one dairyman, one pork that it is hard to know if excess nitrogen could be from fertilizer as EPA was saying, or if it could come from the crops. Some crops put nitrogen into the soil and some crops take it out, so they rotate their crops to balance the nutrients in the soil. Depending on time of year, or succession of crops, nitrogen levels will be higher from one crop and lower from another, so testing results will not be accurate. That made no difference to the EPA rep. I supported the County Commissioner and recommended that local Soil & Water Boards also be included in the te producer, myself and what was most disturbing to me, only one County Commissioner. I don't remember seeing any Farm Bureau representative. I had alerted as many people as I could but the County Commissioners in other parts of the State could not attend on such short notice. There were no representatives from any other State. They did not have enough notice to be able to attend. The County Commissioner, who is a farmer, spoke just before I did. He told the EPA representative that if he just knew what "levels" were considered unsafe (phosphorous and nitrogen were the ONLY pollutants discussed) and if he had the testing equipment, that he would promise them a "clean" county. But the EPA rep told him "no" that the equipment was too expensive and that the testing would have to be done by the Stream Team, a grant-funded partnership of "volunteers" with Missouri Dept. of Conservation. The Commissioner also said sting process. These are the duly elected officials closest to the people. They are farmers and livestock producers and have the knowledge and experience required to make good decisions. But they are not allowed to participate nor even consulted with in EPA's "environmental" programs. EPA's partner in the CWAP is the NRCS, under the Department of Agriculture. Many rural producers and Soil & Water Boards have been intimidated by NRCS since they are at the helm in "cost-share" conservation programs which in the past, had been a beneficial program. This has changed under the previous administration also. And the CWAP placed EPA and NRCS in the position to over-ride local elected Soil & Water officials. After the comment period expired for the CWAP, addressing only the issues discussed at the meetings, EPA/NRCS issued the 111 key elements of the Plan. These included the highly controversial TMDL issue, and the CAFO feeding rule, changing the "C" from "concentrated" animal feeding operation, to "confined" animal feeding operation. There is a big difference between animals being "concentrated" and merely "confined." (Draft Unified Strategy for Animal Feeding Operations, September 11, 1998) During the CAFO meetings, the first one was held in Texas the day BEFORE the meeting Notice was published in the Federal Register. (I cannot find the FR meeting Notice in question now. It may have been TMDL/NPDES meeting which affects CAFOs) During the TMDL meetings, EPA declined Missouri Forest Products Association's invitation to attend a public meeting to explain the TMDL issue. They deferred to Missouri Dept. of Natural Resources who also declined to come and explain the rule. Please review those 111 key elements of the CWAP. I think you can see that they seem to be designed to totally shut down natural resource producers which will destroy the traditions, culture and economies of rural areas. We will never achieve an effective energy policy like President Bush has proposed, or be able to feed America, or rural areas even continue to exist

if the EPA proposals of the previous administration are allowed to continue. Especially if EPA employees continue to take the attitudes they have exhibited in the past eight years.

**Response:** This comment was shared with the EPA Office of Water.

People for the Ethical Treatment of Animals and Earth Island Institute:

Until very recently, the EPA has entirely excluded the animal protection community and animal welfare considerations from its decision making process. To our consternation, we quickly learned that no Federal Register notice had ever been published to inform interested stakeholders about the HPV [High Production Volume] program (to date, there has still been no Federal Register notice) and no solicitation of public input had occurred. In clear disregard of the 1981 policy on public participation, the HPV program had been developed quietly, behind closed doors, between three organizations B the EPA, the EDF, and the Chemical Manufacturers Association. When PETA and other animal organizations attempted to meet and discuss these issues with EPA officials, we were met with complete disinterest and, in some cases, outright hostility. We proposed changes to the program that were endorsed by 17 animal and environmental protection organizations representing more than 10 million Americans and received no response from the agency. We suggested the use of validated non-animal test methods to replace some of the proposed animal tests and were stonewalled by officials in the Office of Pollution Prevention and Toxics. ....To this day we continue to run into problems of notification, participation, and consideration of our issues with other EPA animal testing programs, such as the voluntary children's health chemical testing program (CHTP) and the endocrine disrupter screening program (EDSP). Following our interaction with the EPA on the HPV program, it was abundantly clear to EPA officials that PETA was, in fact, an interested stakeholder in the EDSP. Yet we learned of ongoing EDSP meetings only through an article in the Bureau of National Affairs' Chemical Regulation Reporter. After repeated, we were allowed to place an eminently qualified scientist on the EDSP taskforce but were denied observer status at the meeting, i.e., the meeting is officially closed to the public. Many EPA meetings appear to be held behind closed doors and only the favored non-governmental organizations that the agency is used to, and comfortable in dealing with are invited.

**Response:** This comment was shared with the EPA Office of Pollution Prevention and Toxic Substances.

American Water Works Association:

Notices: For example, the Office of Research and Development (ORD) held a research progress meeting on February 22-23rd to review the results of Drinking Water Grants from the Science to Achieve Results (STAR) program. AWWA, along with other stakeholders with long histories of involvement in drinking water issue, received no advance notice of this meeting. Yet, the results of the research presented at this meeting will likely influence drinking water regulatory policy the next several years.

As another example, the Office of Pesticide Programs (OPP) held a public workshop on February 28th on the methodology for assessing the risks from pesticides in drinking water. The Federal Register notice for this meeting came out on February 26th, two days before the meeting.

**Response:** This comment was shared with EPA's Office of Research and Development and the Office of Pesticide Programs.

York City Wastewater Treatment Plan, York, Pennsylvania:

Municipalities are frequently caught in the middle as the public clamors both for increased environmental protection and stability of public expenditures. In the area of water, for example, the public wants clean water and does not want sewer and water costs to go up unreasonably. When the Agency frequently underestimates or completely fails to recognize the cost of water regulations and other actions, municipalities and the public suffer because the Agency has not properly assessed the benefits against the costs.

**Response:** This comment was shared with EPA's Office of Regulatory Management, the EPA National Center for Environmental Economics, and Office of Water.

Minnesota Pollution Control Agency:

The MPCA has found that the single spot radio ad announcement required under Part 124 for RCRA Permit Notices is not a practical use of public participation resources.

**Response:** This comment was shared with the EPA Resource Conservation and Recovery Act program.

Association of State Drinking Water Administrators:

Unless and until implementation guidance such as data reporting and violation determinations accompanies rule proposals, understanding and thoughtful public response to the issues will not occur. The public and states must understand how a proposed rule will affect them at the local level. This can only be accomplished through review of the implementation requirements to be imposed.

Recent rule proposals and promulgations in the drinking water program have been problematic because the Agency has sought comment on multiple approaches, each potentially having different significant impacts. It is not until the rule is promulgated that states and the public are made fully aware of the Agency's final decisions. In several recent cases, significant decisions were made between rule proposal and promulgation without public comment on impacts and costs associated with those decisions.

**Response:** This comment was shared with the EPA Office of Water and the Office of Regulatory Management.

Consultants in Toxicology, Risk Assessment and Product Safety:

For example, EPA's Options for Development of Parametric Probability Distributions for Exposure Factors (EPA/600/R-00/058 - July 2000) is in many ways an innovative and important document. Initially developed by a contractor, both Agency exposure assessors and several outside assessors reviewed the document. Thus, the document received a private, but not an external peer review, and it completely escaped public comment. No EPA controlled scientific group, such as SAB, reviewed this important document. The external peer reviewers' comments were not available to the external scientific community, and EPA did not allow for public comments on a draft version of the document. So, external scientists with insights to contribute to the document had no venue for submission. In this sense, the document, the

public, the scientific community, the Agency, and taxpayers lost. When CTRAPS reviewed the document, we found several typographical errors, several false assumptions, several places where the authors did not work out important consequences, and several missing citations to the literature. Further, the document had important implications for the development of population assessments of exposure to pesticides, a process under development and controversial at EPA. Yet, none of its authors or reviewers came from the Office of Pesticide Programs (OPP). Public comments would have caught this nearly fatal omission. CTRAPS noticed it. The document exhibits no awareness of the parallel developments within OPP to develop probability distributions of exposure and does not cite them. Understanding what EPA could have lost by submitting the draft document for public comment is difficult.

**Response:** This comment is outside of the scope of the Policy. The comment was shared with EPA's Office of Research and Development, staff of the Science Advisory Board, and Office of Prevention, Pesticides and Toxic Substances.

Consultants in Toxicology, Risk Assessment and Product Safety:

EPA needs to decide whether the external scientific community is part of the "public" and what role the external scientific community should play in developing science-based regulations and policies.

Unless EPA wants to pretend that Agency scientists can credibly review their own work products, external peer review of these products seems advisable. EPA occasionally uses its own Science Advisory Board (SAB) or panels of the National Research Council to obtain peer reviews, while independently soliciting public comments. CTRAPS agrees that this practice is worthwhile. Some consider it essential. (See the National Environmental Policy Institute's Enhancing the Quality of Science in the Regulatory Process, 1998 and Enhancing the Integrity and Transparency of Science in the Regulatory Process, 1996). More recently, EPA has extensively used Agency funded, contractor-run peer reviews. CTRAPS disagrees that these Agency funded, contractor-run peer reviews are worthwhile. In particular, these reviews are poor substitutes for SAB reviews.

Problems remain, even with Agency organized and controlled peer reviews, namely that EPA controls the selection of the SAB or National Research Council experts who participate, either directly or indirectly. Other scientists, who EPA does not want on its panels, still have opportunities to comment on the same scientific support documents, when EPA allows for public comments. Even so, if a National Research Council or an Agency funded, contractor-run peer review does not allow for public participation, public observation, and public access to the documents used in the reviews, external scientists who seek to use the public comment process will face an impediment.

While EPA controlled peer reviews are worthwhile, limiting external comments to selected, if highly credentialed, experts seems questionable. So, the Agency should open the review process to any scientist wishing to comment. To do so effectively, EPA needs to develop better ways to notify the scientific community. Few scientists read the Federal Register. While publication there does discharge a legal obligation, the Agency should develop additional communication channels through widely read scientific journals.

EPA's peer review process has improved since the 1981 Public Participation Policy. Since June 7, 1994, EPA has had a formal Peer Review Policy, by which Administrator Browner required peer reviews of all scientific work products related to major decisions. In response to Congressional and General Accounting Office prodding, the Agency has extended peer reviews of scientific work products to programs that previously did not understand this process or its desirability. [See General Accounting Office, Federal Advisory Committee Act: Views of Committee Members and Agencies on Federal Advisory Committee Issues. (GAO/GGD-98-147) Washington, DC (1998)]. EPA officials less frequently confuse notice and comment with scientific peer review. The Office of Research and Development (ORD) now provides a mechanism for Agency-wide coordination, oversight and planning of peer reviews. ORD's Science Policy Council has generated a Peer Review Handbook, which provides guidance to Agency officials...

EPA needs to decide whether meetings with external scientific experts for purposes of soliciting advice (peer reviews) fall within the scope of the Federal Advisory Committee Act (FACA) and whether FACA meetings improve public participation. If so, the Agency needs to seek reversal of a Clinton administration policy that limited the number of FACA meetings each year...

Both President Bush and Administrator Whitman have recently called for more emphasis on sound science in federal regulations and policies. CTRAPS strongly supports this call. [See Daniel M. Byrd and C. Richard Cothorn, Introduction to Risk Analysis: A Systematic Approach to Science-Based Decision Making. (ISBN 0-86587-696-7) Government Institutes, Dallas, TX (2000)]. However, for it to succeed, EPA must engage the external scientific community through the public comment process, apply FACA to meetings with external scientists, and use normative scientific procedures of peer review and communication. In particular, EPA staff must explain to President Bush and Administrator Whitman that they need to overturn Clinton administration policies to improve participation of the external scientific community in peer reviews...

**Response:** The comment was shared with EPA's Office of Research and Development and staff of the Science Advisory Board. EPA agrees that the definition of public is broad and that alternate methods of notification should be used. The Policy's definition of "the public" includes external scientists and other professionals, as well as research, university, education, professional and governmental organizations and associations. As also noted in the Policy's "Identify the interested and affected public" section, EPA encourages notifying the public through other than Federal Register notices, the use of mailing lists of interested members of the public, working with the media, and participating in the events of others and reaching the members of organizations through their publications. Also see new language added at the end of the Goals section: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement."*** EPA agrees that peer review, especially external peer review, is an important subset of public involvement. EPA's Science Policy Council "Peer Review Handbook" (EPA 100-B-98-001) sets out guidance on how the peer review process should be managed. The Peer Review Handbook notes that it is not appropriate for all external peer reviews to be carried out by established advisory committees, such as the Science Advisory Board. Peer reviews carried out by the National Academy of Sciences (NAS) are

external reviews and are controlled and managed by the NAS. As described in Appendix 2 of the Policy, EPA is subject to the requirements of the Federal Advisory Committee Act (FACA) when EPA establishes or uses an advisory committee to obtain collective advice or recommendations. It should, however, be noted that when EPA obtains advice from individuals rather than a group, the meeting is not subject to FACA.

EPA's Science Advisory Board is a federal advisory committee that provides independent technical advice to EPA on the technical underpinnings of the Agency's decisions. In this process the SAB seeks to work cooperatively with the Agency to support its mission and goals, while maintaining the independence necessary to provide the Agency information, knowledge and critical advice in a credible manner. The Board has mechanisms in place to inform the public about upcoming SAB reviews. In addition to using the Federal Register to announce FACA meetings; the Board publishes a 6-month advance calendar on the SAB's website; hosts a Listserver with news about Board activities; and published a monthly electronic newsletter, *Happenings*, on a rolling calendar basis.

#### Consultants in Toxicology, Risk Assessment and Product Safety:

For example, Administrator Whitman's recent press release about the withdrawal of EPA's new standard for arsenic in drinking water stated, "While scientists agree that the previous standard of 50 parts per billion should be lowered, there is no consensus on a particular safe level." The problem with this statement is that it is false; all scientists do not agree that EPA should decrease the old standard. Some of these scientists submitted public comments to EPA explaining why the standard did not need lowering. In contrast, other scientists retained by an EPA-controlled [word missing], the National Research Council, did recommend a decrease. Unfortunately, Administrator Whitman has chosen to return deliberation of the arsenic standard to the National Research Council, instead of engaging the wider scientific community. Instead, Administrator Whitman (and EPA staff) might have paid more attention to the past reviews by the SAB and to public comments on the proposed new standard. If so, perhaps EPA would obtain better advice by turning the matter over to SAB, as its process admits greater openness and public participation.

**Response:** These comments were shared with the Science Advisory Board, the EPA Office of Research and Development, and the EPA Office of Ground Water and Drinking Water.

## **Various Issues**

#### California Association of Resource Conservation Districts:

In my opinion, this draft arose, in large part, because of the lawsuits over CWAP activities. Since the document does little or nothing to 'substantially' change the previous policy, I see that it will have little positive effect on outreach and communications with stakeholders.

**Response:** As described in the report "Engaging the American People,"

[<http://www.epa.gov/publicinvolvement/policy.htm#engaging>] an EPA workgroup conducted an internal and external review of the 1981 Public Participation Policy, and recommended that EPA modify the Policy to recognize the changed role and capacity of state, tribal and local levels of

government; new laws and policies affecting public involvement; the electronic age; and EPA's experience in public involvement. The review began at the suggestion of a FACA committee. The Framework for Implementing EPA's Public Involvement Policy, released with the final Policy describes actions EPA intends to undertake to implement the Policy. See the Framework at [<http://www.epa.gov/framework.pdf>].

Color Pigments Manufacturers Association, Inc.:

An example of problems which may ensue when informal guidance is published through the Internet and not through appropriate notice and public comment procedures is the publication and distribution of the Waste Minimization Prioritization Tool ("WMPT"). The WMPT was intended to prioritize chemicals based on the characteristics of Persistence, Bioaccumulation and Toxicity ("PBT"). Chemicals with higher scores would be targeted for minimization and elimination from waste streams and the environment.

However, the WMPT was constructed by using a simplistic scoring system in which three points were assigned to each characteristic. Unfortunately, EPA did not consult with the public to seek comment on what could only be described as a major rulemaking effort which, if fully implemented, would have a very significant negative impact on many industries. EPA instead spent considerable resources to develop the model software system. Following this, EPA distributed the flawed software through the Internet. When academic and industry experts became aware of the program, the obvious problems with the flawed software and the basic scoring system used by the software were immediately pointed out to EPA.

Although there were many problems with the WMPT, from our perspective, the most serious was that the program far overweighted mere persistence in the environment. Metals and other benign compounds, such as titanium dioxide, were assigned values which were as high as highly toxic compounds. This is because mere persistence was not only one complete category, but also an incorporated characteristic in measuring bioaccumulation and toxicity. After EPA in effect withdrew the WMPT, which had been distributed through the Internet, the State of Washington, through its Department of Ecology, adopted the failed program as a means of identifying compounds and products for dramatic reduction in manufacture and use. The rule in Washington was entitled the "Proposed Strategy to Continually Reduce Persistent Bioaccumulative Toxins". Of course, by adopting the WMPT as a measuring device, Washington would not be able to determine accurately what compounds are PBT's from those that are not. The WMPT could not accurately determine which compounds or products could be used as environmentally beneficial substitutes, even if a consensus were made on the compounds or products which should be the targets of substitution.

Therefore, due to the premature release of this flawed risk analysis scheme without appropriate disclaimer, a state government proposed to use the scheme to define acceptable and unacceptable products in interstate commerce. This occurred even while national and international agencies are still debating PBT and similar risk analysis and prioritization. All of this could be avoided if reasonable, substantive and timely notice had been provided to the interested public before the new rule was distributed by the EPA in an apparent final form.

**Response:** The Waste Minimization Prioritization Tool is outside of the scope of this Policy; however, this comment was shared with the EPA Office of Prevention, Pesticides and Toxic Substances and the Office of Regulatory Management.

WPI:

...I am referring to occasions when the EPA grants oversight of a project to a state or other entity. I find that the states or others do not then conduct proper community involvement practices, or do not require the regulated party to do so.

**Response:** EPA's Public Involvement Policy is intended to provide guidance to EPA staff on how to conduct public involvement activities. It does not place any requirements on states, tribes or local governments, but EPA does and intends to continue to encourage those governments to develop and implement their own public involvement policies.

American Chemistry Council:

As a general rule, the Council believes the Agency too often fails to involve the public in the early stages of defining issues and options. Instead, these are presented when they are largely fleshed-out, and the public is merely invited to comment. At best, this results in delay and inefficiency, as issues and options are reworked in light of public input. As worst, it is too late in the process to fully express public views, so the Agency's treatment of issues and options, by not including public input, is less than ideal.

**Response:** EPA agrees that early public involvement provides the best results.

National Association of Home Builders:

NAHB is encouraged by EPA's stated commitment to public involvement, but will withhold our judgement as to whether this process will be carried out in a fair, balanced, and impartial manner. NAHB members and staff spend large amounts of time and resources monitoring EPA and other regulatory agencies and participating in a wide array of governmental panels, working groups, FACA committees, SBREFA panels, etc. Unfortunately, NAHB members frequently feel they are viewed as adversaries and that all of these process mechanisms are mere formalities that must be followed before a preconceived conclusion can be reached. This is an unfortunate conclusion and one that NAHB members hope can be improved through this public involvement effort.

...members of the public and the regulated community, including NAHB members, have often found themselves barred from meaningful participation due to a lack of notification, procedural flaws, inaccessible documentation, and an inability to understand EPA's often complex and highly technical proposals.

Guild Law Center and Michigan Environmental Justice Coalition:

Too often, community members feel that decisions have been made long before they entered the process and that their public comments essentially fall on deaf ears. As a result, many people may choose not to commit the time and energy to submitting meaningful comments on agency actions.

**Response to above two comments:** EPA expects that implementation of this Policy should minimize the problems mentioned in these comments, and that the public will have increased and fair opportunities for early and meaningful involvement in EPA's decisions.

Citizen #4:



I support the idea of increasing public involvement, and you have enumerated several ways that this can be facilitated, but I doubt that any of this will ever become a reality. From my own experience, I have found that public officials, at best, only tolerate genuine public comment. I am sure that many officials find it a nuisance. This whole notion really amounts to nothing more than paying lip service to the concept of involving the public. Mostly the public is ignored, and I suppose the rationale will always be that the particular agency, or public official, doesn't have the requisite resources (i.e., budget, people, etc.) to respond to the public's requests. I have numerous examples from own experience in Wichita, Kansas, at almost every level of government, including the federal government.

**Response:** This comment was shared with EPA Region VII. EPA expects that implementation of this Policy should minimize the problems mentioned in the comment, and that the public should have increased opportunities for early and meaningful involvement in EPA's decisions. Please refer to the Policy's "Who manages the application of this policy?"

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## 16. ISSUES NOT RELATED TO THE POLICY

EPA received a number of comments that did not relate to the Public Involvement Policy; instead they discussed other environmental topics or controversies. Commenters are listed below so to document their participation; however, the text of their comments is available in the EPA docket. EPA forwarded the comments to the appropriate EPA offices and is not responding to them in this Response to Comments document.

### **Environmental Education**

Citizen #52

### **Support for Genetically Engineered Corn Lines**

Citizen #77

### **Land Use/Property Rights**

Property Rights Congress of America, Inc.

### **Enforcement**

Virginians for Wilderness Forests of the Central Appalachians Project

### **Pesticides Regulation**

National Coalition for the Chemically Injured

Citizen #78

### **Clean Water, Clean Air**

Citizens #12, #76, #79 and #80

### **EPA's Web Page**

OMB Watch

## **Accountability for Access to Information**

OMB Watch

## **Use Government Performance and Results Act Processes**

Environmental Defense

American Chemistry Council

## **Various Issues**

Citizens #61, #69, #81 and #82

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## **17. Public Comments Regarding State or Delegated Governments**

EPA modified the draft Public Involvement Policy to address comments regarding the roles of states and to clarify language regarding its applicability to states as follows:

1. New language in the Policy's section "What are the Roles of States, Tribes and Local Governments?" includes:

***"State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions:***

***1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.***

***2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.***

***3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions."***

2. Additional language in the Policy's "When Does This Policy Apply?" section (new language in bold italics):

***“This Policy applies to all EPA programs and activities. In programs or activities where the public is already meaningfully involved, EPA can use this Policy to enhance that public involvement. Where the existing level of public involvement needs to improve, this Policy provides suggestions for how to move forward. Finally, this Policy can serve as a model for building public involvement into new programs as they are developed.***

***The activities where conducting meaningful public involvement should particularly be considered include:***

6. ***EPA rulemaking, when the regulations are classified as Economically Significant Actions (under the terms of Executive Order 12866)***
7. ***EPA issuance or significant modification of permits, licenses or renewals***
8. ***Selection of plans for cleanup, remediation or restoration of hazardous waste sites or Brownfields properties***
9. ***EPA's decision on whether to authorize, delegate or approve states or local governments to administer EPA programs consistent with the relevant regulatory requirements for each program ( Note: Tribes seeking approval to administer environmental programs under EPA statutes generally also seek “treatment in a similar manner as a state (TAS)” status from EPA. Appropriate opportunities for public participation are contained in the relevant statutory and regulatory provisions establishing a TAS process. Consult with the Office of Regional Counsel or the Office of General Counsel, and/or the American Indian Environmental Office for assistance.)***
10. ***All other policy decisions that are determined by the Administrator, Deputy Administrator or appropriate Assistant, Regional or Associate Administrator to warrant public participation in view of EPA's commitment to involve the public in important decisions***
11. ***The development of significant information products (as the Office of Environmental Information has defined them in Appendix 2: Definitions)”.***

3. Additional language in the Policy's “Does This Policy Affects Authorized, Approved or Delegated Program? section (new language in bold italics):

***“EPA developed this Policy for EPA staff use, but it also may be useful to states, tribes and local governments that implement federally delegated, authorized or approved programs. EPA encourages these entities to adopt similar public involvement policies if they have not already done so. EPA intends to discuss the effectiveness of their public involvement activities during periodic meetings with states, tribes and local governments, and will obtain their input about ways to improve EPA's activities. EPA will not use whether a state, tribe or local government has adopted EPA's Public Involvement Policy as a criterion for the authorization, approval or delegation of programs or the award of grants. In general, recipients may use grants for continuing environmental programs and Performance Partnership Grants to fund public involvement activities to the extent that costs are allowable under OMB Circular A-87***

***and applicable EPA regulations. [Note: Some statutory or regulatory provisions require compliance with certain public participation requirements before EPA may approve a grant. (See 40 CFR §§ 25.11 and 25.12.) The grant applicant may comply with such requirements without adopting EPA's Policy.]'***

### **Need to Clarify State Role in EPA Decisions**

#### Ohio Environmental Protection Agency:

As states' role in the regulatory process steadily increases, it would seem that states should play a role in developing rules and policies, not merely commenting on proposed rules. Ohio EPA values the input of all stakeholders; however, U.S. EPA should recognize the states' elevated role in establishing national environmental rules and policies as the states are responsible for implementing them.

#### Nebraska Department of Health and Human Services, Drinking Water Program:

The draft policy does not address each State's pivotal and regulatory role in implementing new rules. The State is a regulatory partner of the USEPA. States should not be treated as one of several listed entities to whom USEPA would like to apply the new public involvement policy.

#### Association of State Drinking Water Administrators:

ASDWA is concerned that this approach wrongly reinforces the perception that states do not have a unique role at the table when regulatory decisions are being made. In the majority of cases, states have primary enforcement responsibility for each of those regulatory decisions. State drinking water programs have parallel regulatory authority and responsibility to carry out the provisions of the Safe Drinking Water Act. As co-regulators of Federal and state environmental laws, states must be considered as full partners with the Federal Government as regulations are designed and implemented to protect the public health.

**Response to above three comments:** See new language stated above which recognizes the multiple roles of states, tribes and local governments.

#### Environmental Council of the States, from the ECOS federalism resolution:

ECOS supports early, meaningful, and substantial State involvement in the development and implementation of environmental statutes, policies, rules, programs, reviews, joint priority setting, budget proposals, budget processes, and strategic planning, and calls upon the Congress and appropriate federal agencies to provide expanded opportunities for such involvement.

**Response:** Commitment to meaningful, timely and substantive consultative engagement in the development of regulations, policy and budget proposals is part of EPA's partnerships with states in the management of federal environmental programs. In this spirit of expanded engagement, EPA's Public involvement Policy and other policies promote going beyond the more narrow definitions of recent Executive Orders and statutes to encourage greater interactions between EPA and both state and local governments.

#### Association of State and Territorial Solid Waste Management Officials:

...we found the role of States and other government entities as co-regulators understated. We will not speak for other government entities, but in our experience States are not stakeholders in the general sense addressed here, because they are sovereign governments whose views must be addressed and incorporated into decision making. In many cases, State waste programs have parallel regulatory authorities which will be used to carry out their professional environmental decisions. Those State decisions will be developed with full consideration of public participation, but will not necessarily incorporate all those public recommendations. In many cases, States and other governments must put in place implementing steps which will make federal decisions possible (e.g., institutional controls). In short, there is a discrete requirement for early, continuous federal consultation with State governments in order to develop the parameters of environmental decisions. We are not suggesting that the Agency attempt to define the State-EPA relationship in this policy document, but to acknowledge that it exists and is different from the public policy described herein. We do not agree with the characterization at the top of page 82337 that State regulatory agencies can be "stakeholders who provide input into EPA's decisions", because it oversimplifies and confuses this very complex relationship.

**Response:** See above two responses.

Iowa Department of Natural Resources, Water Supply Section:

Page 82337: Goal: To ensure that the Agency communicates to the public how its input affected the Agency's decision. If there are significant changes made to a proposed rule as a result of the public comments, add an additional step for review of those changes by the States and other stakeholders. An example of where this didn't happen was with the Consumer Confidence Report Rule. In the six months between the proposed and final rule (February to August 1999), there were significant changes made to the rule. Those changes were never subjected to public review.

**Response:** EPA's internal deliberative processes should take all public comments into consideration. After the Agency determines how to use those comments to modify a draft rule, and makes the changes to reflect those decisions, the Agency issues the rule. Unless the process EPA designs is an iterative process, and is so stated for all interested parties, EPA determines the changes from draft to final based on all the information it gathers. Legally, if EPA makes substantive changes to a rule between the proposal and final, EPA must re-propose the rule (and thereby subject to a new comment period) only if the changes were not a logical outgrowth of the proposal.

## **States as Partners in Public Involvement Activities**

New York State Department of Environmental Conservation, Office of Administration:

We also commend the inclusion (p. 82337) of the objective of "striving to identify, communicate with and listen to all affected sectors of the public". This should include the recognition that state environmental agencies share with EPA the role in planning and conducting public involvement activities that provide equal opportunity for all individuals and groups to be heard. For instance, there may be situations where DEC will have greater insights for recommending extra encouragement and assistance to some sectors, such as minorities and low-income

populations, or small businesses, which may have fewer opportunities or resources to participate in EPA actions.

**Response:** See expanded language on methods in the "What are the Roles of States, Tribes and Local Governments?" states: ***"(states) In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities."*** Also, ***"Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions. EPA will seek to include such partnering efforts in public involvement training for EPA staff."***

New York State Department of Health, Center for Environmental Health:

When EPA staff are conducting any public involvement activity (e.g. meeting, fact sheet distribution, etc.), they need to notify the appropriate State and local agencies prior to the activity occurring and allow time for the State and local government to be involved.

**Response:** In the interest of maintaining good partnerships, EPA agrees that Agency staff should notify state and local agencies prior to public involvement activities as suggested in the comment. EPA intends to include such partnering efforts in public involvement training for EPA staff.

## **States Should Not be Required to Implement EPA's Policy**

Minnesota Pollution Control Agency:

EPA wants state, local and tribal governments to adopt policies similar to EPA's. This may not always be practical, desirable, or necessary. For example, if a state wants to adopt an EPA rule, EPA should have already applied its Policy while promulgating that rule. Repeating the Policy in the state would be duplicative and would result in delays rather than improved decisions. Second applications of this Policy would either derive the same conclusion following a delay, or raise a conflicting result, neither of which is beneficial.

The Policy has the effect of an unfunded mandate for the agency. It sets goals where the Policy admits no implementation criteria yet exist.

Nebraska Department of Health and Human Services, Drinking Water Program:

We support public involvement and education but have some concerns about this draft policy eventually being applied to the States.

The Draft Public Involvement Policy was written for use by the U.S. Environmental Protection Agency (USEPA). However, throughout the draft document reference is made to the States adopting similar public involvement policies. The draft policy also says that the USEPA will review and comment on State efforts to increase public involvement during annual meetings,

audits, and other meetings regardless of whether the States actually have adopted these policies. Nebraska statutes do not allow our Drinking Water Program to enforce USEPA policies. Rather the Program can only enforce regulations.

Alabama Department of Environmental Management:

The applicable language may be interpreted to mean that every work plan that the Department receives would require the project manager to notify the public (see also #2 and #3).

Furthermore, this condition is lumped into a category with actions that currently require public notice (permit issuance and significant modifications), so will this policy require a public notice, comment period, and feedback for all work plans received by the Department?

Missouri Public Drinking Water Program:

I appreciate the acknowledgment that this policy is not binding upon states, tribes and local governments that implement federally delegated, authorized or approved programs. However, I am concerned that the implementation of the policy will differ from this position. Our experience has been that EPA policies and guidance documents all too often turn into binding requirements.

Association of State and Territorial Solid Waste Management Officials:

While we think the policy may well meet the needs of the Agency to direct its own actions, we are most concerned with the message that this policy will be made a condition of future State program requirements. This message is more alarming because it is incorporated along with a disingenuous disclaimer that the policy is not binding on any party other than EPA itself. We refer to two statements that are apparently intended to point to the way the Agency will review State environmental programs (emphasis added). The first states that:

“ The Draft Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA, or any other Agency. It is, however, EPA's statement of its strong commitment to full and meaningful involvement in Agency activities. As a policy, the Draft Policy is not binding on states, tribes and local governments that implement federally delegated, authorized or approved programs. However, EPA encourages those entities to adopt similar policies and will discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs.” (page 82338)

and the second states that: “Although this Draft Policy is not binding on states, tribes and local governments, EPA encourages these entities to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA. EPA intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), any program audit or review.” (page 82343)

We think the final sentence of each of these statements carries a clear message that EPA headquarters and regions intend to impose this policy, though putatively not binding on states, as a condition of approval, authorization or delegation, or for provision of federal grants, work plans, or other similar State-EPA agreements relevant to the implementation of those federal statutory programs delegated, authorized or approved by the Agency. If this is EPA's intent, it is inappropriate and arguably illegal and should be immediately changed before it is challenged by

litigation. If it is not EPA's intent, the Agency must make that abundantly clear so that its many employees cannot possibly misunderstand the intent of these paragraphs, and all other readers will understand that the non-binding policy is genuinely so. The binding public participation requirements of each environmental program are established by law and regulation, and by the delegation agreements developed by individual States with their Region on the basis of those statutory and regulatory requirements. Other conditions, particularly drawn from a non-binding policy, are not legitimate.

Our recommendation is that EPA delete the final sentences of each of the paragraphs cited above, and instead include language along the following lines:

" EPA encourages these entities to adopt similar policies and will offer technical assistance to that end during its periodic reviews of state, tribal and local government programs. In no case will the authorization, approval or delegation of environmental programs or the provision or continuation of any federal funding in the form of grants, cooperative agreements, or other financial assistance agreements be predicated or made conditional on that entity's adoption of all or any part of this federal Draft Policy."

We think this change is an essential affirmation of the Administration's commitment to federalism and a stated intent to remake the relationship between the federal government and States and other governments. If this policy language is left unchanged, EPA would convey the clear signal that it was prepared to engage in surreptitious rulemaking, despite the absence of statutory or rulemaking authority in this instance. This is the wrong message, and we trust the Administrator will quickly amend the ill-advised language noted above.

#### National Governors Association:

We are primarily concerned that, despite the disclaimer that the Draft Policy is not binding on states, it appears that EPA would be able to impose the policy as a condition of federal approval of delegated programs, or for federal funding of those programs. In at least two places, the Draft Policy notes that EPA will "discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs." (page 82338); and "EPA intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local programs(s), any program audit or review." (page 82343).

We are of the opinion that these statements could indicate an intention by EPA to impose this policy as condition of approval, authorization or delegation, or for provision of federal grants, work plans, or other similar State-EPA agreements relevant to the implementation of such measures. The Draft Policy, if left unchanged, has the potential to conflict with existing state delegation agreements and individual environmental programs implemented by the states, all of which include statutory and regulatory requirements for public participation.

We urge the Draft Policy to be amended to make it absolutely clear that the Policy will not be binding on states. The Administrator has committed to Governors that she will seek a more positive partnership between EPA and states; the language cited in the Draft Policy of the previous Administration unfortunately sends the opposite message.

#### Association of State Drinking Water Administrators:

While the proposed policy states that it is not a rule and is not binding on the states, the draft specifically refers to the policy's application in situations "...leading to a determination of



approval of state, tribal or local government administration of a program..." as well as during annual reviews and program audits. The proposed policy also states that where public participation requirements already exist within a regulatory program, such requirements should be considered the "minimum level" of public involvement.

ASDWA is concerned that this broadly written language leaves too much to individual interpretation as Agency personnel make determinations regarding state drinking water program primacy applications, Drinking Water State Revolving Loan Fund awards and withholdings, and programmatic approvals for state drinking water strategies, plans, and approaches such as those for capacity development and operator certification. ASDWA is concerned that such statements could lead to imposition of the proposed policy as a condition of approval, authorization or delegation, or for provision of grants, work plans, or other similar state-EPA agreements. As proposed, the latitude offered by the draft policy has the potential to become yet another de facto regulation imposed on the states.

ASDWA recommends that this language be either deleted or modified to acknowledge existing state delegation agreements and individual state environmental program implementation efforts. States must not be made accountable for nonbinding Federal policies.

South Dakota Department of Environment and Natural Resources:

As guidance, there is some good information contained in this document regarding public participation....Therefore, I would recommend that EPA limit the scope of this document strictly to EPA's operations.

**Response to above eight comments:** See new language shown at the beginning of this section that clarifies that states are not required to implement this Policy.

Association of State Drinking Water Administrators:

By its nature, the mechanism for drinking water rule promulgation in delegated state programs generally does not encourage wide public participation. The practical reality is that once a new Federal regulation has been adopted, states must adopt a regulation at least as stringent to qualify for primacy. Adoption of Federal regulations by reference at the state level is strongly encouraged by EPA. This approach allows little opportunity for the public to provide meaningful input regardless of state public participation efforts. The more effective opportunity is to enhance public involvement at the time of Federal rather than state rule development. Unless there is a significant fee issue or contamination problem that affects the public at large, there is typically little public participation even when actively solicited by states.

**Response:** EPA's implementation of the Policy should enhance public involvement at the federal level.

Alabama Department of Environmental Management:

The first bullet on page 65FR 82338 indicates that this policy (including the draft) applies to: "EPA activities in support of programs that are authorized, approved, or delegated by EPA that are funded by EPA financial assistance (grants and cooperative agreements) to States, tribes,

interstate agencies, intertribal consortia, and local governments.” The first full paragraph in the middle column on page 65FR 82343 states: “Although this Draft Policy is not binding on states, tribes and local governments, EPA encourages these entities to adopt similar policies where they administer federal programs authorized, approved, or delegated by EPA. The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal, or local program(s), and during any other program audit or review.” ADEM would vigorously oppose any attempt by EPA to require this Policy to be implemented as a condition of any grant, Memorandum of Agreement, or any other similar agreement between ADEM and EPA. Further, we would oppose EPA using this Policy as a means of forcing entry for non-statutory or regulatory considerations, such as environmental justice, into grant conditions. This draft policy would impose significant unfunded mandates and detract from basic program implementation. EPA must recognize that States have been tasked with implementing a variety of new programs as a result of unfunded federal mandates and limited resources cannot be further stretched.

**Response:** EPA’s 1981 Public Participation Policy required states to conduct effective public involvement as a condition of receiving EPA grants. This Public Involvement Policy does not. Should a state wish to use EPA funds to support public involvement, the National Environmental Performance Partnership System and Performance Partnership Agreements can support public involvement.

Florida Department of Environmental Protection, Division of Water Resource Management:  
Clarification is needed as to when the states are required to institute the details of this policy. The policy states on page 82338: “As a policy, the Draft Policy is not binding upon states, tribes, and local governments that implement federally delegated, authorized or approved programs”. However, on page D-4 of Appendix D (Part 25), it is stated that “the policy applies to all EPA activities as well as to State and local activities funded or delegated by EPA.” We are particularly concerned whether a state agency that is working under a federal grant that involves public participation is required to follow all the procedures required of federal agencies that are laid out in your policy. In other words, does the fact that a state is receiving federal money for a project obligate the state agency to be bound by the public participation procedures of the policy?

**Response:** The second citation above is contained on page D-4 of Appendix D of the report “Engaging the American People,” which quotes EPA’s 1981 Public Participation Policy. That language is not in the draft 2000 or the final Public Involvement Policy, nor in 40 CFR Part 25. See clarified language at the beginning of this section about the applicability of this Policy to states.

Western States Water Council:

...the policy should clearly recognize that states already have equivalent or equally effective policies in place, and the draft policy should not be used as a checklist to evaluate state programs and impose new public participation requirements on states beyond that required by existing law or regulation.

**Response:** Some states have similar public involvement policies. States are not required to implement this Policy; see clarified language at the beginning of this section.

Missouri Public Drinking Water Program:

I encourage you to consider deleting from the policy the statements that could be misinterpreted as linking a successful annual program review to whether or not a state is implementing EPA's policy. These are:

--- Delete from page 82338 the sentence: A. However, EPA encourages those entities to adopt similar policies and will discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs; and

--- Delete from page 82343 the statement: EPA encourages those entities to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA. The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), and during any other program audit or review.

**Response:** EPA has changed or deleted this language in the final Policy. EPA will not use state adoption of EPA's Public Involvement Policy as a criterion during EPA reviews of state programs.

**Public Involvement Requirements of States**

Wisconsin Department of Natural Resources:

Under the list of actions when this draft policy applies (p. 82337-82338), the policy does indicate it applies to EPA activities in support of EPA-funded programs, yet it does not seem to apply to those activities which are funded by EPA and carried out by others. Public involvement activities, consistent with the EPA policy, can become part of funding agreements and a requirement for those funds. We are not proposing and Wisconsin would not endorse prescriptive public involvement approaches or techniques in funding agreements. One size does not fit all and Wisconsin has had difficulty when requirements were overly rigid in the past. However, adding language regarding basic standards, goals, and expectations for public involvement to funding agreements does seem appropriate.

City of Phoenix, Arizona, Office of Environmental Programs:

Methods to ensure that the public involvement Policy will be implemented by delegated agencies need to be defined and strengthened. While the Policy states that it applies to delegated programs (P 82338), the Policy then states that it is not binding and that EPA will "encourage" these entities to apply. This is very weak and allows for too much discretion on the part of the delegated agencies (such as states with delegated permitting programs). Instead, EPA should provide specific funding for public involvement in grants and hold delegated entities to the same standards that EPA is supposed to achieve. Otherwise, the Policy will not be implemented, as public involvement can be costly, controversial, and create project delays. If there are no clear incentives or requirements, public involvement activities can easily be overlooked or inadequately conducted by a delegated agency, especially at the Project Manager level.

**Response to above two comments:** The EPA's 1981 Public Participation Policy, which this Policy replaces, linked the adequacy of state public participation activities with provision of EPA funding. This Policy does not contain such state requirements. However, states working with

EPA can include public involvement provisions and funding in their National Environmental Performance Partnership Agreements and grants.

Center for Public Environmental Oversight:

At a time when states are pressing for more regulatory authority, EPA should go beyond encouraging states, tribes, and local governments to adopt public involvement policies. It should make both delegation of authority and the provision of federal assistance contingent on the existence and implementation of public involvement policies, to the extent that statute allows.

That is, in general EPA is authorized to delegate authority to state, tribal and local programs when those agencies demonstrate both the will and capacity to implement those programs effectively. Often that qualification is recognized through a formal agreement with EPA. Public involvement, including particular emphasis on involving environmental justice communities, should be a requirement in such agreements.

Finally, if any state, tribal, or local environmental or public health agency adopts and implements an agency-wide public involvement and environmental justice policy, then that should be seen as a major step toward satisfying the requirements for delegation or assistance for specific programs managed by that agency.

**Response:** The Policy does apply to the process for delegation of authority, but not as a condition for federal assistance. See the Policy's "Does This Policy Affect Authorized, Approved or Delegated Programs?" This sections states ***"EPA developed this Policy for EPA staff use, but it also may be useful to states, tribes and local governments that implement federally delegated, authorized or approved programs. EPA encourages these entities to adopt similar public involvement policies if they have not already done so. EPA intends to discuss the effectiveness of their public involvement activities during periodic meetings with states, tribes and local governments, and will obtain their input about ways to improve EPA's activities."***

Golden Gate University, Environmental Law and Justice Clinic:

As it stands now the Draft Policy is not legally enforceable, but is instead, "the EPA's statement of its strong commitment to full and meaningful public involvement in Agency activities."

However, because the policy does not, "confer any legal rights or impose legal obligations on any member of the public, EPA or any other agency," the EPA is not actually being held accountable to the public. Unfortunately, in our experience, a strong commitment to the public is not always enough. Conversely, citizen suit provisions in environmental laws are an invaluable tool in empowering the public to be actively involved in environmental protection. Building such a provision into the final Policy, making it into a Regulation, or requiring states to incorporate the Policy into State Air and Water Quality Plans submitted to the federal government, would make it clear that the Agency is prepared to stand by, and be held to its words, and truly rely on input from the public.

**Response:** The Policy provides guidance only for EPA's activities and will not become a regulation or requirement for EPA or states. Title 40, Part 25 of the Code of Federal Regulations specifies public involvement requirements under RCRA, SDWA and CWA; the

Clean Air Act and other statutes contain specific requirements for public participation. Also see above response.

Sierra Club, Committee on Environmental Justice:

Many programs, especially delegated state programs, have serious deficiencies in public participation, and deserve concentrated attention. Yet, the Policy offers no mechanism by which the Policy can be deployed other than having public involvement be “among the issues discussed” during the annual program reviews.

**Response:** States are not required to implement this Policy. See revised language at the beginning of this section.

**Do Not Include Public Involvement as an Issue in EPA/State Reviews**

South Dakota Department of Environment and Natural Resources:

...the policy includes a statement that says the policy is not binding on the states, it also says EPA is to use the policy in its annual reviews of state programs. We would hope this does not mean that we have to submit an annual review of our public participation procedures so EPA can determine whether we meet the goals of this policy.

Environmental Council of the States:

As published, Policy contains language clarifying that it is not binding on states, tribes and local governments. In the very next sentence, the document states that US EPA intends to include public involvement among issues discussed during its periodic reviews of federally delegated programs. Thus, the avenue for abuse is apparent. While it may be appropriate to discuss how public outreach is being conducted in general at these meetings, to the degree that US EPA intends to apply some sort of “checklist” to states in the same manner that it would review its own employees’ performance, ECOS objects. This is directly contrary to the notion that the states are partners in environmental programs, not just another category of stakeholder. It also does not ensure that flexibility in how public participation efforts are conducted will be recognized and valued. We recommend that the Policy distinguish between US EPA’s review of its own programs and its much more limited oversight of programs delegated to the states.

Wyoming Department of Environmental Quality, Water Quality Division:

As guidance, there is some good information contained in this document. However, most states already have in place their public participation policy. I notice that the document suggests that this document would not be binding on a state, yet it turns around and directs EPA officials to include public involvement among the issues discussed during the annual review. I suggest that the application of this document be limited in scope to EPA's operation. If there currently exist problems with public participation in a state, then those problems can and should be handled during the annual review. However, the birth of this document should not mean that every state program should now go through a review of its public involvement methods.

Missouri Public Drinking Water Program:

The policy states that EPA encourages states, tribes and local governments to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA: The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), and during any other program audit or review. (See pages 82338 and 82343.) Such wording tends to discredit the statement that the policy will not be binding on states.

EPA's oversight of state public involvement activities should be limited strictly to the requirements in the law and regulations. Any public involvement activities that are beyond the requirements in regulation and law are entirely the purview of the state. Additional oversight through policy or guidance is both unnecessary and inappropriate. It is unnecessary because states, like EPA, recognize the value in providing for public involvement opportunities that are more extensive than the minimum required by law. It is inappropriate because EPA oversight should be focused on the requirements, not state implementation of federal policies.

**Response to above four comments:** See new language at the beginning of this section that clarifies that EPA does not use state adoption of EPA's Public Involvement Policy as a criterion during EPA reviews of state programs.

### **EPA Should Ensure that State, Tribal and Local Public Involvement Commitments are Carried Out**

#### Center for Public Environmental Oversight:

...the existence of a formal policy does not ensure public involvement in practice. When EPA first awarded Brownfields Assessment Pilots, for example, many recipients promised public involvement, actually naming community group partners in proposals, but they failed to follow through. EPA began to check such promises, even contacting listed community partners. This should be a general practice. EPA, to the extent that resources allow, should ensure that state, tribal, and local public involvement policies are carried out as advertised.

**Response:** EPA agrees that when public involvement activities are included in or funded under an EPA grant, contract or cooperative agreement, EPA should ensure they are carried out.

### **State Comments Supporting Discretion in Public Involvement Activities**

#### Association of State and Territorial Solid Waste Management Officials:

As we understand the policy, the key is that the Agency intends to apply the six basic functions listed on page 82338, and to use as many of the techniques listed thereafter in carrying out those functions. While we agree that functions substantially along these lines assist a successful environmental public participation program, we have to note that each carries considerably different resource implications. While the suggested techniques and vehicles all have merit, their use will also be affected by state judgments about the priority and availability of resources. We are concerned that with this policy the Agency may mistakenly raise public expectations that all levels of government can and will provide the full range of described participatory vehicles and techniques. For example, the description of function number 3, "Consider Providing Technical or Financial Assistance to the Public to Facilitate Involvement" at

page 82339 includes items sometimes specifically excluded by State statutes such as compensated advisory committees. The Agency should revise this language to be clear that this listing is exclusively one of federal program support, and that State and other governments should be expected to address these resource intensive vehicles on the basis of State priorities and laws.

South Dakota Department of Environment and Natural Resources:

Second, state agencies are in the best position to determine the appropriate public notification procedures for the programs we implement. Every state has established procedures that work best for that state in its laws, regulations, and policies. Those state procedures must meet the minimum federal requirements established in federal law. We are committed to meeting those minimum legal standards for providing notice to the public on our delegated programs. But, anything beyond those minimum federal standards must be left to the state to decide.

Environmental Council of the States:

Effective US EPA public outreach may vary program-to-program as well as region-to-region, hence the need for flexibility. It is understandable that the Policy may spell out more detailed criteria for US EPA's own public participation activities. The Policy needs to recognize the need for flexibility in gauging whether delegated State programs have met the goal of the Policy. In short, while US EPA may wish to adopt specific Policy recommendations for its own staff to utilize in conducting public participation efforts in its various programs, it should not use the Policy as leverage against the states to dictate specifically what procedures constitute adequate public outreach. The Policy should specifically note that states may choose to achieve these goals in very different ways and that it is not the role of the US EPA to decide how they are achieved. The laudable goal of effective public participation should not serve as an excuse or mechanism by which the federal government micro-manages state programs.

Michigan Department of Environmental Quality, Surface Water Quality Division

We support the concept of allowing states discretion in establishing the appropriate public involvement opportunities depending on the situation. The Draft Policy can be used to determine the appropriate nature and extent of public involvement above the minimum requirements.

The National Pollutant Discharge Elimination System (NPDES) permit program is a good example. The NPDES permit program has its own public participation process established by federal and state regulations. Michigan has a well-established public participation process that includes elements above the basic requirements. While we support the concept of improved public participation, it is equally important to maintain the timely issuance of permits. Michigan recently completed a successful effort to eliminate the backlog of expired NPDES permits. Allowing flexibility in determining the nature and extent of public participation beyond minimum requirements will help address permit backlog issues.

Nebraska Department of Health and Human Services, Drinking Water Program:

In the draft policy, the USEPA says several times that the USEPA wants States to adopt formal guidelines for public involvement above that involvement required by regulations. We believe that formal guidelines are too inflexible. We would like to maintain this flexibility to respond as needed. This enables us to prioritize staff time and funds and to tailor our response to individual situations and issues.

If States have to comply with the USEPA's public involvement policy after it becomes final, the record-keeping burden will increase. The number of documents that will need to be written will increase substantially. Additional demands besides these two listed examples will be placed on staff time and program funding at a time when several new rules are moving through the implementation process at the State level. We need to maintain flexibility in assigning staff and funds when and where they will do the most public good in the State of Nebraska.

**Response to above five comments:** States are not required to implement EPA's Policy. See clarified language at the beginning of this section.

Environmental Council of the States:

ECOS reminds US EPA that the two parties signed an Agreement to further outcome-based environmental decision making and joint planning by establishing the National Environmental Performance Partnership System in May 1995. The capability and individuality of state programs is a fundamental precept of the NEPPS ideal. Earlier this month, Administrator Whitman reaffirmed her support for NEPPS in an interview with ECOS staff. Neither the language nor the interpretation of the Policy should contradict the philosophy undermining NEPPS. What makes sense in some circumstances will not make sense in all; therefore US EPA headquarters and regional office staff as well as the thousands of ECOS member employees need to remain focused on the goals and not become obsessed with the process.

**Response:** EPA strongly supports NEPPS, and this Policy does not contradict the philosophy behind it. States may use NEPPS agreements and grants to support state public involvement activities.

### **EPA Should Delegate Programs to Lowest Level of Government**

New York State Department of Health, Center for Environmental Health:

When possible, delegate the program to the level of government closest to the people, or work with a higher level entity (e.g. a state) to design a way that a lower level of government can be involved or take on some of the program responsibilities. This will enable people to become more involved in a program/project.

**Response:** This comment is outside the scope of the Policy. It was shared with the EPA Office of Congressional and Intergovernmental Relations.

### **EPA Should Provide Public Involvement Funding to Delegated Programs**

Environmental Council of the States:

ECOS members appreciate the recognition in the Policy that training is important to accomplish these goals and that federal grant funds should be made available to states to cover some of the additional costs of public involvement.



**Response:** EPA intends to share its information on best practices in public involvement and available training with states, and to invite states to participate in public involvement training. The National Environmental Performance Partnership System agreements and grants may be used to support state public involvement activities. In addition, the Policy's "Plan and budget" section states (new language in bold italics): "*When identified in an approved grant work plan, grant funds may be used, subject to any statutory or regulatory limitations, to support reasonable costs of public involvement incurred by assisted agencies **or organizations**, including advisory group expenses.*"

Alabama Department of Environmental Management:

The Department's position here is that currently State funding is earmarked for specific grant commitments and unless EPA substantially increases funding to the Department specifically for public outreach, then the Department could not provide financial assistance to the public as part of this program.

New York State Department of Health, Center for Environmental Health:

As we stated in our "General Comments Attachment", we concur with the draft Policy that programs need to properly plan and budget for public involvement activities. This logic needs to carry through when EPA is providing funding for projects that are delegated. If more public involvement is needed/mandated then additional resources should be allocated.

Alabama Department of Environmental Management:

Lastly, this proposal seeks to provide all of this information through mail outs and/or information repositories free of charge. State environmental agencies do not have the fiscal resources to provide such information at no cost. Substantial additional federal funding would be required to implement this provision.

Florida Department of Environmental Protection, Division of Water Resource Management:

Suggestion to encourage involvement opportunities in programs delegated or authorized to states, tribes and local governments: Everyone is short on funds. Provide these organizations with funding directed toward involvement activities with specific requirements for outreach, such as reaching all of the communities affected within the specific areas covered by the policy. Funding often is needed for equipment for producing communication materials, vehicles, and for positions to carry out this effort.

**Response to above four comments:** States are not required to implement EPA's Policy. States may use the National Environmental Performance Partnership System agreements and grants to support state public involvement activities. In addition, the Policy's "Plan and budget" section states (new language in bold italics): "*When identified in an approved grant work plan, grant funds may be used, subject to any statutory or regulatory limitations, to support reasonable costs of public involvement incurred by assisted agencies **or organizations**, including advisory group expenses.*"

**EPA Should Provide Public Involvement Training for Delegated Program Staff**

New York State Department of Health, Center for Environmental Health:

The draft Policy calls for "guidance, resource and training" for technical staff. We would like to suggest that when a program is delegated that staff working for the delegated entity receive training on:

- poverty (how people living in poverty select priorities, their thought process, barriers to their involvement, etc.)
- effective public involvement (what is it, why is it important, benefits, potential consequences of not doing it, etc.)

**Response:** EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy focuses on public involvement training for EPA staff. EPA plans to make this training available to delegated program staff as well. Please see

<http://www.epa.gov/publicinvolvement/framework.pdf> for this document. EPA intends to include the topics suggested above in EPA's training materials.

McNulty Group:

.... skip requirements for detailed written public involvement plans, etc. Instead, institute a traveling training program (which you can make mandatory) that is designed to convey the concept of public involvement supporting decision making rather than being decision making. (Making decisions in public, not the public making decisions.) Require the decision makers to participate in the training, and insist all others involved in the delegated project (deputies, managers, regulation writers, etc.) participate as well. You cannot demand they change the way they think or make decisions, but you can convince them to change. Here your goal is changing attitudes; probably won't happen in a single session.

**Response:** EPA intends to include a discussion of how public involvement supports EPA decision making in its training materials, and EPA plans to make this training available to delegated program staff. EPA agrees that many EPA employees should be participants in public involvement training tailored to their particular responsibilities and functions.

International Association for Public Participation:

In terms of specific techniques for identifying interested people and groups, providing technical assistance, providing information, and conducting public participation activities there are hundreds of pages and decades of experience available to the EPA and your colleagues. While the ideas delineated in your Draft Policy are admirable, we recommend that EPA conduct a comprehensive training program where particular techniques can be presented and discussed in context with your staff at headquarters, at the regions, and at the Tribes and states. In addition to the community relations staff who currently have responsibility for most public participation, we also recommend training for project and program staff, technical staff, senior decision makers, contracting officers and attorneys, restoration advisory boards and other regular participants. IAP2 offers a full complement of public participation training developed by the top practitioners in the field. This training includes the principles of public participation, public participation planning, communications for public participation, large group techniques and small group techniques.

**Response:** EPA is aware of IAP2 training and recommends it among other offerings. EPA agrees that it would be helpful if many EPA employees participated in public involvement

training tailored to their particular responsibilities and functions. EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy focuses on providing public involvement training for EPA staff. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

Environmental Council of the States:

ECOS members appreciate the recognition in the Policy that training is important to accomplish these goals and that federal grant funds should be made available to states to cover some of the additional costs of public involvement.

**Response:** EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy focuses on training, and EPA plans to make this training available to delegated program staff as well. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document. Several states have expressed interest in participating in the training, using EPA public involvement materials and resources, and providing information to share with EPA and other partners.

Florida Department of Environmental Protection, Division of Water Resource Management:

In some areas, if not all that funding may involve new positions and training: Training is undervalued, especially for those designated as "trainers and communicators." Our staff have been searching for economic "train the trainers" programs to improve their ability to listen to and teach others. These types of programs are generally quite expensive.

**Response:** EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy contains a strong training component, and EPA plans to make its training information available to delegated program staff. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

New York State Department of Health, Center for Environmental Health:

Some states, tribes and local governments will need more help than others conducting public involvement. Written guidance/self-teaching manuals about common problems or how to handle controversial issues would be useful. For example, the guides could discuss what things tend to exacerbate the issue and techniques that would help defuse the situation. Two programs that delegated entities often look for help with are Brownfields and the environment vs. jobs debate.

**Response:** EPA hopes to gather and share case studies and to create other helpful materials. Several manuals are already available on the EPA web site at <http://www.epa.gov/publicinvolvement/involvework.htm#manuals>

## **Can EPA Create Public Involvement Programs for States?**

ACES, Inc.:

In our case MADEP was involved with EPA from the beginning. When a State agency is involved, it should facilitate public involvement since we are more closely allied to State representatives. As an example, in MADEP has a PIP (Public Involvement Program) whereby

10 or more citizens can request a PIP; it requires periodic public meetings at which the PRP is required to explain the status of their project. The potential public comments and questions insure improved documentation since the PRP knows we are "looking over their shoulder". Could EPA create a similar PIP for States not providing this tool?

**Response:** This Policy applies only to EPA, and EPA does not intend to create similar ones for states. However, the example cited above is a "best practice" that EPA intends to share with states. This comment was shared with EPA's Superfund office.

### **What EPA can do to encourage, promote and ensure effective public involvement in programs that have been delegated to states, tribes and local governments?**

The draft Policy requested commenters to provide suggestions on the above question. The comments are shown below. EPA appreciates these suggestions and will seek to incorporate many of them as EPA implements the Policy, collects and shares best practices, and develops training materials.

#### Wisconsin Department of Natural Resources:

However, some of the need relates to education and training in the field, philosophy, and practice of public involvement. EPA should support and foster the field, training, and awareness. Become a visible advocate for the value and values of public involvement. The International Association for Public Participation could be a key partner in such an effort.

#### Iowa Department of Natural Resources, Water Supply Section:

EPA needs to become more results-oriented in its implementation policies, rather than being so prescriptive at times. If the objectives of the rules are met, even though it is by a method that wasn't outlined in the implementation guidance, then EPA should allow and accept the process and method that meets those objectives. (E.g.: Iowa has used public participation in its rules and policy development for the drinking water program for several years. As an example, the capacity development program held several meetings as a part of a year-long process with the stakeholder group to develop the ideas that were used in the existing system strategy. The stakeholders group included those with a traditional interest in drinking water (water treatment operators, design engineers, municipal governments, rural water systems, etc.) and those who were more peripherally interested in drinking water and water quality issues (banking industry for infrastructure improvement, medical community for immunocompromised and susceptible people, conservation and wildlife groups for water quantity and quality issues, agriculture interests, health insurance industry, etc.). There were instances where this group suggested a new approach to a given issue, but it was perceived that EPA would not allow it. Since EPA had the power to withhold the funds tied to the program via approval or denial of the State's capacity development program, and there were tight deadlines involved with the entire process, those novel approaches were not used.

#### McNulty Group:

How to ensure effective Public Involvement in delegated programs. First, you can't. No way you can get an absolute here. Effective public involvement is a state of mind, not a procedure.

Decision makers, their assistants, regulation writers, and program administrators have to \*want\* to have information from those they affect before they make decisions. If they don't want to listen and understand, you can't make them. You can make them go through the motions, but you can't make them think the way you want them to.

New York State Department of Health, Center for Environmental Health:

EPA should consider how much involvement it has with a program it delegates to a state or local government. EPA should not walk away from a delegated program; however, it should not be expected to be doing a significant portion of the program for the local entity to which it was delegated.

- Open lines of communication should be established and maintained between EPA and the delegated entity. The communication should include regular, 2-way conversations and timely sharing and discussion of information.
- The emphasis on public involvement needs to continue through the program development stage to the program implementation stage until the program is completed.

Rutgers University, Cook College, Center for Environmental Communication:

EPA should use means that have worked to promote other innovations in delegated programs. Some of the "promotional approaches" that might work for PI include incorporating PI in written documents (such as MOUs) delegating programs; funding PI; building capacity of delegated agencies (e.g. providing conferences --which EPA is already beginning to do successfully, research on effective PI; evaluation tools, etc.), providing successful models of PI.

The draft policy does not address clearly a concept critical to promoting PI in delegated programs. EPA's role in PI is not merely as a sponsor (or delegation) of PI. In some cases, such as watershed management efforts or other community-based efforts, EPA needs to play a role as a participant, not a leader. Perhaps the policy could more explicitly acknowledge that sometimes PI is not merely between EPA (or delegated agencies) and stakeholders but also among all parties. While often EPA will serve as lead agency, sometimes EPA should serve merely as a catalyst or be one participant among equals. A number of studies have suggested agencies' difficulty with empowering others to act has been the cause of PI failures.

Citizen #8:

With regard to providing information & opportunities to various concerned parties in a situation where EPA is delegating power &/or oversight to another entity (State, tribe, etc), the 'partnering' with that entity, in which EPA does the outreach WITH the 'delegatee', is most likely to work to the benefit of all concerned. The Hanford cleanup (Tri-Party Agreement) is an example of this. Even though there will be some overlap of information to some of the participants at first, this is helpful, because: participants may get a sense of the 'leanings' of the various agencies involved; participants will be able to compare quality of information (as well as timeliness, opportunities for input, thoroughness of advertisement, etc) between agencies; & there's a greater likelihood of including those who may not be included otherwise (because of lack of funds, bias against certain media, language barriers, cultural isolation, etc). When things are going smoothly, EPA may quietly go about

some other business, becoming a 'silent partner' in the work / jurisdiction which they've delegated.

Florida Department of Environmental Protection, Division of Water Resource Management:

Suggestion to encourage involvement opportunities in programs delegated or authorized to states, tribes and local governments: Everyone is short on funds. Provide these organizations with funding directed toward involvement activities with specific requirements for outreach, such as reaching all of the communities affected within the specific areas covered by the policy. Funding often is needed for equipment for producing communication materials, vehicles, and for positions to carry out this effort.

Provide funding for public awareness with the delegated programs: Funding directly to outreach programs may be the key. Outreach implies getting information into the community and getting their concerns heard outside of the community. Funding of this sort often becomes waylaid. When the public hears that something is going to effect their world, they often become interested enough to speak out in some form.

One recommendation is to provide funding for advertising to the public (in 6th to 10th grade language) and for education. For some agencies, outreach is still developing and materials for outreach information can be costly to develop. There are still bridges to cross between outreach coordinators and those with direct understanding of the environmental information.

Children's Environmental Health Network:

The Network supports the Agency's goal of encouraging similar involvement opportunities in programs delegated or authorized to states, tribes and local governments. In addition to providing support for such programs through trainings, grants, materials and similar activities, the Agency could establish awards or other means of recognition for governments that do an outstanding job in this area.

Washington State Department of Ecology, Toxics Cleanup Program:

How will these public participation policies be encouraged among states, tribes, and local governments? It was a "fluke" that we in Washington even found out about this draft. EPA Region X has done excellent training in the past and kept us informed on a personal basis. I have observed over the years that great ideas with good intentions come from EPA Headquarters. What is lacking is an adequate number of regional staff to actually carry out these great ideas. Will EPA be working through their Community Relations staff in each region to promote EPA's new policy?

**Response:** EPA will be working through all programs' staff to implement the Policy.

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## 18. Public Comments Related to Local Governments

EPA modified the draft Public Involvement Policy to address comments regarding the roles of local governments. Training materials plan to stress the important role that local governments can play in identifying people and organizations, communicating with them on behalf of or in collaboration with EPA, and making consultation with communities more effective because of

their knowledge of the history, the issues, social and economic conditions, and the best ways, times and places to engage people.

New language in the Policy's "What are the Roles of States, Tribes and Local Governments?" section is as follows:

***"State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions:***

***1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.***

***2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.***

***3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions."***

### **Clarify Roles of Local Government**

#### City of Phoenix, Arizona, Office of Environmental Programs:

The role of local governments as key stakeholders in the public involvement process is barely mentioned in the draft Policy. It is unfortunate that the local governments, which are directly impacted by many of EPA's decisions, have not been viewed as partners in the public involvement processes. For example, local governments can provide EPA with listings of neighborhood organizations, names of concerned citizens, locations of libraries/schools, etc., and a local perspective about impacts of proposed activities that EPA may be unaware of. The role of local governments should be clarified and strengthened in the Policy so that EPA staff will recognize the importance of coordinating with local governments.

#### City of Toledo, Ohio:

I find it distressing that local governmental entities are not mentioned as a partner in the draft policy. As you are aware, local governments have been involved in environmental issues well before the federal and state agencies ever existed. We are where the policies and regulations issued by the USEPA are monitored and enforced. It is important to have local representation be involved!

City and County of Denver, Colorado, Department of Environmental Health:

The Draft Policy makes no allowance for the different role played by public entities like DEH. Instead, public entities are treated like any other stakeholder, their acknowledged different role and expertise in public participation procedures ignored. EPA should change this in the new policy, and recognize local government as a partner on environmental and health issues, not just another member of the public. The new policy should recognize that local governments have in place excellent communication systems with neighborhoods and elected officials; understand community economic and social concerns; and have a regulatory and enforcement interest in environmental issues such as air, water, contaminated industrial sites, and public health.

City of Dallas, Texas, Department of Environmental and Health Services:

The following specific recommendations are provided to encourage EPA to make local governmental entities full partners in the public involvement process. This can be accomplished by:

- Keeping the local officials fully informed of the issues.
  - Using local government to develop contacts in the impacted "public" sphere.
  - Relying on local government to do their share in contacting and providing information to citizens.
  - Make local officials, both elected and staff, participants in the education, discussion and decision making process.
  - Where assistance is necessary to facilitate public involvement, utilize the resources of the local governmental entity. Provide assistance to the governing body if resources are lacking.
- The emphasis on EPA/local government partnerships is due the fact that local elected officials are closer than any other elected officials to the people they represent and are better able to facilitate their involvement. There may be, on occasion, a tendency by local officials to let the EPA handle matters on their own. However, EPA should not take the position of "we know best" and neither should EPA allow local government to avoid their responsibility.

City and County of Denver, Colorado, Department of Environmental Health:

We feel that the new policy needs to do three key things:  
Recognize and strengthen the role of local governments...

Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee, Inc.:

In the subject policy, local governments are treated as a part of "the public." EPA should keep in mind that local elected officials are empowered by their office to speak for a broad constituency and are primary stakeholders. Thus, input from elected officials should be accorded more weight than that from an individual. Impacted communities would benefit greatly if EPA were to establish direct lines of communication with local governments.

City and County of Denver, Colorado, Department of Environmental Health:

DEH understands the importance of public involvement both to gather facts and to ensure credibility for agency decision making. We wish to be a partner with EPA to improve communication, streamline decision processes, and increase the public's access to information.



Citizen #58:

Check with the elected officials at all levels - Interview them and ask that they share their responses with their constituents.

Citizens for Responsible Water Management:

Well-informed local politicians can help the EPA select the most appropriate means for interacting with the public and reduce the likelihood of inappropriate regulatory actions.

Citizen #88:

One of the best means of communication to rural residents about pollution and environmental problems is through the local health departments. The environmentalists who work for the local health departments are generally well informed and good communicators and could get the information out to the public.

New York State Department of Health, Center for Environmental Health:

Identify the interested and affected public - underserved.

- Partner with local health departments. Often local health departments:
- know the people in the community;
- can provide information on how the community is likely to respond to an issue;
- can speak the language of most of the people in the community; and
- have a positive relationship with the community that could overflow to a "partner" agency.

**Response to above eleven comments:** EPA agrees that public involvement efforts can greatly benefit from partnerships with local governments who have knowledge of communities and their cultural norms, as well as established positive relationships. The Policy reflects this and recognizes the importance of such relationships with local governments. See new language at the beginning of this section. EPA intends to include such partnering efforts in public involvement training for EPA staff.

Reichold, Inc.:

Local leaders and officials can help expand public involvement outreach. In these cases, mailings may have to suffice since e-mail and the Internet may not reach everyone in these categories (except for local municipal governments). Notices could be printed and posted in the community by the local stakeholder. EPA Funds may be needed to cover the cost of mailings, printing notices and the labor to post such notices in local community centers.

**Response:** See above response. Regarding funding, if EPA has a site-specific or project-specific partnership agreement with a local government, such funding could potentially be provided.

New York State Department of Health, Center for Environmental Health:

When EPA staff are conducting any public involvement activity (e.g. meeting, fact sheet distribution, etc.), they need to notify the appropriate State and local agencies prior to the activity occurring and allow time for the State and local government to be involved.

**Response:** In the interest of maintaining good partnerships, EPA agrees that this is a best practice that EPA should use consistently. EPA intends to include this suggestion in public involvement training for EPA staff.

City of Madison, Wisconsin:

It has been my prior experience that municipalities as a whole have been under represented during the drafting of federal regulations. If we want to improve the participation of minorities, low-income and under served populations while strengthening EPA's commitment to early meaningful public involvement, I strongly recommend that the local units of government be given a stronger voice during the rulemaking process.

I am suggesting that, at a minimum, EPA should follow the lead of DOE and others who involve the National League of Cities, the National Association of Counties and the US Conference of Mayors in the rulemaking process. They in turn will gather data from cities like Madison, Wisconsin.

City of Cedar Rapids, Iowa, Solid Waste & Recycling Department:

As the Director of the Solid Waste and Recycling Department with the City of Cedar Rapids, we are always criticized by our customers that they feel they have no say in any decisions made at the City level regarding their solid waste collection programs. Many times the decisions made are made for the health and welfare of the community and need very little discussion other times there may even be a Citizen's Committee established to study the matter.

Many times we as City officials feel the same when issues come up at the State or Federal level. I am aware that the Department of Energy has a policy, which follows a course of action whereby their policy requires that the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and the International City/County Management Association be invited to be involved in DOE actions. I strongly encourage that the EPA adopt the exact same policy. Many times there may be very little to discuss and at other times, those of us that are effected at the local level may have concerns requiring more thorough thought and dialogue before actions are taken.

York City, Pennsylvania, Wastewater Treatment Plant.:

A major concern and objection is that the policy fails to state a specific role for municipalities as part of the public.

Municipalities cannot, without considerable investment of time and money, evaluate the cost and other consequences of the many regulations proposed. Not having an objective basis for comment or objection, municipalities often do not make them. Yet municipalities and municipal associations frequently have the expertise to support a reasonable assessment of Agency actions. The new Policy should make special provision for municipal participation as a part of public participation. Too frequently municipalities are seen as special interests whereas environmental groups are seen as the public. This is unsound because municipalities represent the public in a broad sense reflecting their electorate. As such, municipalities should be given a special role in public participation.

We urge you to recognize the value of municipal participation in Agency actions and to make special provision for it in the Final Public Involvement Policy.

Environmental Council of the States:

On the issue of early public outreach, the policy should recognize the role that regulated entities and local government bodies need to play. Frequently a proposed project is fairly old by the time it reaches the environmental regulated agency. This is especially true of permit applications.

US EPA Local Government Advisory Committee:

First, the draft does not outline any efforts above and beyond those included for the general public to engage local governments in the Agency's work.

**Response to above five comments:** In some cases, local governments have an implementing role in federal programs. In other cases, as the comments illustrate, local governments are concerned more about the impact of federal activities on them as regulated entities. For both purposes, EPA recognizes the need to consult closely with local units of government as the Agency develops policies and crafts regulations. EPA maintains a number of advisory bodies that include both local members and members of national associations representing local government officials. In addition, the Agency has established the thirty-member Local Government Advisory Committee and its standing Small Community Advisory Subcommittee, composed of elected and appointed officials from across the country, as well as representatives from other locally based interest groups, to focus specifically on the needs and concerns of local governments and communities. EPA intends to emphasize in public involvement training for EPA staff the need to coordinate closely with local governments.

US EPA Local Government Advisory Committee

1. EPA's responsibility in this LGAC-Association [national associations representing local governments] relationship is to make the appropriate staff available to assist. It is essential that the Administrator and senior staff adopt a policy requiring EPA staff members to provide accurate and timely information to LGAC members and the associations, and that they be responsive to requests for assistance. Further, the EPA must be willing to solicit actively input from local governments during critical phases in programs and processes, such as in policy development and rule making. The LGAC will help the EPA to understand that local governments are not simply a sector to be regulated, but also a valuable partner available to assist in reaching important environmental goals.

2. The LGAC commends EPA for its efforts to increase consultation with State and local elected officials in compliance with Executive Order 13132. This consultation should be coordinated with other existing forms of consultation to build a stronger and more comprehensive interactive engagement of local government with EPA.

3. The LGAC recommends that EPA enhance the role of regional offices in interacting with local governments. LGAC urges EPA to investigate opportunities for institutionalizing local government advisory capacity within the Agency's regional structure.

4. No new policies, regulations, programs and services which significantly impact local entities should be put forward by EPA without the Agency conferring with a broad representation from local government, institutions, and other relevant stakeholder groups, in accordance with Executive Order 13132.

5. From this point forward, the criteria for grant programs that are designed to serve local entities' needs should be reviewed by a broad representation from local government, institutions, and other relevant stakeholder groups prior to the development of the Federal Register Notice for such grants, and every three years thereafter for the duration of the program.

6. LGAC encourages EPA to direct its technical and policy staff members throughout the organization to seek input from local government officials at the earliest stages of the decision making process.

**Response:** The US EPA Local Government Advisory Committee submitted the above six comments for the record as pertinent recommendations that had originally been included in the Committee's report of March 2001, *"Building the Communication Network between the Federal and Local Governments"*. At the time of submittal of the 2001 recommendations, the Agency committed to carefully review and implement, where appropriate, practice changes consistent with the Committee's recommendations. This revised Policy follows that theme and articulates much more completely than the draft 2000 policy did the unique and significant role of Tribes, States and Local government in the management of EPA programs. Further, EPA in its recent reformulation of regulatory processes and implementation of Executive Orders and statutory revisions redefining the advisory role of states and local governments in particular, has more fully recognized the important roles of States, Tribes, and local governments in the formulation of program processes and practices.

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## 19. Public Comments Regarding Tribal Issues

The draft Public Involvement Policy specifically requested public comments on the following questions, "What EPA can do to encourage, promote and ensure effective public involvement in programs that have been delegated to states, tribes and local governments?" and "How EPA can improve involvement opportunities for minority, low-income and underserved populations?" The comments below address these questions as they pertain to tribes. EPA appreciates these comments, and intends to coordinate among the various EPA programs that work with tribes to ensure that these issues are included in EPA training programs. Some of the recommendations contained in these comments are also included and responded to in other applicable sections of this Responsiveness Summary. All of the comments contained in this section of the Responsiveness Summary have been provided to the American Indian Environmental Office (AIEO) and to the appropriate EPA Regional Office Tribal Coordinators.

In order to clarify the unique role and status of tribes, and EPA's responsibilities for consulting with tribes on decisions that may affect them, EPA added the following new language in a section of the "What are the Roles of States, Tribes and Local Governments" section of the Policy:

***"The role of Tribes is unique in another way. Each federally-recognized tribal government is a sovereign entity that has an individual government-to-government relationship with the federal government. Therefore, it is appropriate for EPA to engage in consultation activities with such tribes in addition to activities that the Agency would undertake for the public. EPA should coordinate and consult meaningfully with Tribes to the greatest extent practicable for agency actions that may affect the tribes. This Policy complements EPA's efforts to consult with Tribes. (See Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (Nov.6, 2000.))"***

***Consultation should be a meaningful and timely two-way exchange with Tribal officials that provides for the open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision making, and respect of Tribal self-government and sovereignty. The Agency should allow comment from Tribes early in the planning process and prior to making a decision. However, consultation does not imply that the Tribes or any other non-EPA entities that are consulted can stop an Agency action by withholding consent."***

University of Washington, Department of Geography Doctoral Student:

Finally, I notice throughout the policy that the term stakeholder is considered to include Tribes. Given the government to government relationship accorded to Tribes they should be called out explicitly.

**Response:** See the new text added to the Policy (shown above) which clarifies the unique role and status of tribes.

Citizen #56

Overall, I think that the Draft PIP is a good policy that represents a balance of competing interests. If EPA officials actually try to comply with the Draft PIP, they will necessarily have to invest much effort. It could lead to better decisions, it could lead to more people having the perception that EPA is actually concerned about what they think on particular issues, but it will not be easy.

This leads to my basic comment about the Draft PIP. One of the points on which EPA asks for comments on "What EPA can do to encourage, promote and ensure effective public involvement in programs that have been delegated to states, tribes and local governments." I am mostly concerned with how EPA can help tribes develop and use effective public involvement programs, without imposing an overwhelming burden on tribes, for example by creating standards that would strain the resources of tribal governments.

Tribal governments should be encouraged to provide meaningful opportunities for public involvement in environmental programs. In theory, at least, doing so holds the potential for disarming arguments that tribes should not have authority over non-Indians because non-Indians do not get to vote for tribal officials. On the other hand, if tribal officials provide a public forum and people use it to challenge the tribe's right to exercise governmental authority, I could understand it if tribal officials were to decide that they did not want to go through that again.

I think that there is a very important set of issues at stake. As some of the comments in the on-line dialogue demonstrated, a lot of people in this country resist the principle that tribes are sovereign governments. EPA could do more to help the general public understand this. I also believe that it is important for non-Indians who live within Indian reservation boundaries to know the historical circumstances through which reservations were opened to settlement by non-Indians. Even though such events occurred one hundred or so years ago, generally through federal policies that have long been repudiated, the federal laws of that era inflicted wounds on tribal cultures that have not healed. EPA might be able to help non-Indian reservation residents understand this. An example of this problem was provided by the comment filed in the on-line dialogue by the person who kept referring to the Coeur d'Alene Reservation as the "(former?)" reservation and who said she did not understand why the Tribe's maps of the Reservation listed the area where her land was located as having been illegally seized from the Tribe when her family had valid patents from the federal government. Well, after the Supreme Court decided *Lone Wolf v. Hitchcock* in 1903, Congress learned that it was constitutionally permissible to break treaty promises with tribes and take tribal land. It's easy for me to understand how a tribe might describe taking land in violation of a treaty as an illegal seizure even if the Supreme court says that Congress has the power to do it. It's also easy for me to see that a tribe whose ancestors have been in a place since time immemorial might see a hundred years of presence by the descendants of white homesteaders as a relatively short period. I guess the point is that tribal members and non-Indian reservation residents have very different understandings of the last hundred years or so, and my impression is that a lot of the non-Indians do not seem to care very much about trying to see this recent history from an Indian perspective. I think that people in the larger American society really need to learn about this era of history and try to understand the suffering that has been inflicted on Indian people. See Dean B. Suagee, *Trust Funds and Trust Lands: The Stories Beneath the Story*, 15 *Natural Resources & Environment* 51 (Summer 2000). I think EPA has a role in promoting such understanding.

As a member of the Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC), and one of the authors of the NEJAC "Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and tribal Members in Environmental Decision Making," I was involved in discussions with tribal representatives on the topic of government-to-government consultations between federal agencies and tribes and the topic of public participation in tribal environmental programs. I have also co-authored a law review article on the topic. See Dean B. Suagee and John P. Lowndes, *Due Process and Public Participation in Tribal Environmental Programs*, 13 *Tulane Environmental Law Journal* 1 (1999). In that article, I tried to list some of the legal requirements imposed on tribal environmental programs by federal statutes and regulations administered by

EPA. I have the impression that many tribal officials and attorneys regard these federal minimum requirements for public involvement as burdensome but acceptable. Through my involvement in the environmental justice movement, I have become aware that many people believe that the minimum requirements are simply not nearly enough to ensure meaningful public involvement.

In my experience, many tribal representatives are not very comfortable with EPA giving them advice on how to accomplish public involvement. Many tribal representatives are not yet convinced that EPA employees know how to relate to tribes in a government-to-government basis. In my view, I think that EPA should be able to engage tribes in government-to-government consultation and also help tribes promote public involvement, perhaps by developing a range of optional practices for tribes. (I almost said "best practices," but I am afraid that if we use that term, the message will be that using anything less than the "best" will not be good enough.) Before charging ahead, though, I believe that EPA should engage tribes in consultation on this topic. Executive Order 13175 seems to require as much.

So, I suggest that EPA formally engage tribal governments in a dialogue on public involvement. The dialogue should include at least four topics:

- (1) Government-to-government consultation with tribes regarding EPA actions and policies;
- (2) Government-to-government consultation with tribes regarding decisions made, and programs administered, by states pursuant to delegation from (or approval) by EPA;
- (3) Public involvement in tribal programs, perhaps limited to programs delegated to tribes EPA (and tribal programs authorized pursuant to federal law); and
- (4) Public involvement in EPA programs that affect rights and interests of tribes and their members.

Personally, I think that all these topics overlap, but I would anticipate that many tribal representatives would say that at least some of these topics should be addressed separately.

In sum, I think that EPA should engage in consultation with tribes regarding the general topic of public involvement, and should do so in a way that starts out with a full range of topics on the table. Through consultation, some topics may be identified as high priorities and others may be set aside.

While I think that EPA should engage in such a broad-scope consultation process, that does not mean that the Agency should ignore more specific topics in the mean time. One specific topic on which the Agency should engage the tribes in consultation is the nature of EPA's responsibilities under the National Historic Preservation Act (NHPA). The Agency's responsibilities under the NHPA have implications for the first two topics listed above (i.e., Government-to-government consultation with tribes regarding EPA actions and policies, and Government-to-government consultation with tribes regarding decisions made, and programs

administered, by states pursuant to delegation from (or approval) by EPA). I suggest that EPA begin a process of consultation with tribes to establishing a policy to meet EPA's responsibilities under the NHPA. I addressed the NHPA in one of the comments I posted in the on-line dialogue. Since those comments are not part of the formal process of commenting on the Draft PIP, I have pasted that comment into this letter (with corrections for misspelled words):

Several commenters have noted the need to seek involvement from various kinds of groups and individuals that make up the public, generally those in the vicinity of the area where a proposed action will cause environmental impacts. At least one commenter mentioned efforts to contact local Native American groups.

In many cases there are legal requirements to identify federally recognized tribes that should be invited to participate, because, for example, there may be impacts within a reservation or there may be impacts on off-reservation resources in which tribes have statutory or treaty rights. In such cases, it's not usually very hard to determine which tribes ought to be contacted.

In other cases, however, it may be considerably more difficult, particularly where tribes may have statutory rights to be consulted regarding actions that affect aboriginal lands that are located some distance from their present-day reservations. Two important statutes that establish such rights are the Native American Graves Protection and Repatriation Act (NAGPRA) (which applies to federal lands and tribal lands) and the National Historic Preservation Act (NHPA) (which, like NEPA, is triggered by federal agency action or funding, regardless of the ownership status of the affected lands).

Let me briefly state some of the requirements of the NHPA (16 U.S.C. 470 et seq.), as implemented through regulations issued by the Advisory Council on Historic Preservation (36 C.F.R. part 800, revised Dec. 12, 2000, 65 Fed. Reg. 77698). The right of tribes to participate in the section 106 consultation process is based on section 101(d)(6) of the Act (codified at 16 U.S.C. section 470a(d)(6)). In its outreach efforts for specific actions that will result in environmental impacts, including permit decisions, EPA is legally obligated to determine whether the proposed action is an "undertaking" for purposes of the National Historic Preservation Act and, if so, whether the undertaking has the potential to cause effects on historic properties. 36 CFR section 800.3(a). If the proposed action is such an undertaking, then EPA must make a "reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties." Section 800.3(f)(2). This is supposed to be done at the very outset of the NHPA section 106 consultation process. Tribes have a right to participate in the process of identifying places that are potentially eligible for the National Register of Historic Places and to contribute their views in making determinations of eligibility. Tribes also have the right to consult regarding effects of the proposed undertaking on any such National Register eligible property and the adequacy of proposed measures to avoid or mitigate adverse impacts.



Some places that are eligible for the National Register include places commonly referred to as archaeological sites, some of which may include human burials. Such places may not be known to exist until construction activity cause some disturbance; or there may be indications that such sites exist but there is no need (and no funding) to do any excavation until there is a threat. Some such places may be eligible for the National Register, and may also hold religious and cultural significance for a tribe. (If there are burials, and they are culturally affiliated with a modern tribe, the tribe will almost always regard the site as holding religious significance.)

In addition, there is a category of historic property commonly known as a "traditional cultural property" (TCP) which is eligible for the National Register on one or more of the standard criteria but which also has ongoing importance in the cultural life of a living community, such as an Indian tribe. Many TCPs are relatively undisturbed natural areas that are important in tribal religious practices. E.g., certain sand bars in the Rio Grande have been determined to be eligible for the National Register, as have the tops of many mountains. Generally there is no need to go through the process of determining eligibility for the National Register until there is some kind of threat. Even then, many tribes are very reluctant to document their cultural and religious practices.

In any case in which an EPA action has the potential to affect National Register eligible properties, EPA has a duty under the statute and regulations to seek out potentially concerned tribes and consult with them, involving them in the relevant determinations in the section 106 process.

In addition, under the statute and regulations, an action "subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency" may be an "undertaking" for purposes of the NHPA. Section 800.16(y). This raises another set of issues regarding such actions as NPDES permits issued by states -- what are EPA's NHPA responsibilities for such permits? What are the states' responsibilities?

I raise these issues because I'm afraid they will tend to be ignored. In many cases there will not be easy practical answers. One of my friends who works for a tribe that was removed from the southeast to Oklahoma tells me that he receives a lot of notices of proposed actions from a variety of agencies -- what he receives in the way of notices far exceeds the Tribe's capacity to respond. So just identifying potentially concerned tribes and sending written notices does not seem to be an effective way of actually achieving meaningful consultation. On the other hand, I suspect that federal agency staff in regions such as the southeast, from which many tribes were removed to Oklahoma, probably feel overwhelmed by the effort of trying to identify the tribes that they are obligated to invite to consult.

The Department of the Interior and the Advisory Council on Historic Preservation have launched a project to develop a data base for use in identifying tribes and engaging in consultation, and I strongly recommend that EPA investigate this project and become involved in it.

Under Section 110 of the NHPA, each federal agency is required to develop an historic preservation program, and to do so in consultation with, among others, Indian tribes and Native

Hawaiian organizations. Since this is a subject matter in which the federal statute recognizes the interests of tribes in historic places outside their reservations, I believe that it could be a very constructive framework for consultation among EPA and the tribes. As we all know, pollution of the environment crosses jurisdictional lines, and so governments in different jurisdictions should try to cooperate. Because Indian tribal cultures are grounded in the natural world, and in particular places, pollution tends to affect Indian people differently than it affects the larger society. The process established under the NHPA allows tribal representatives to bring their cultural values into federal decision making processes. I believe that EPA staff, and state agency staff, could benefit from a sincere effort to engage tribes in the development of an EPA policy for implementing the NHPA.

**Response:** EPA agrees that the Agency has a role in promoting understanding of tribal histories and cultures within EPA staff and managers. EPA headquarters and regional offices conduct training for its management and staff entitled "Working Effectively with Tribal Governments." The purpose of this training is to increase awareness and respect for tribal cultures, and clarify how those cultural differences should influence EPA's interaction with Tribes. The training also surveys several important concepts in federal Indian law such as tribal sovereignty, the federal government's trust responsibility to Tribes, and the government-to-government relationship between the federal government and federally-recognized tribal governments. The training also explains EPA's Indian Policy, which recognizes Tribes as the most appropriate entity to manage reservation environments. Through this training EPA management and staff should gain a better understanding of Native American history, culture, sovereignty, environments, and EPA's approach to furthering tribal management of reservation environments.

EPA has established a workgroup to develop internal agency guidance for implementing Executive Order 13175 "Coordination and Consultation with Indian Tribal Governments." The workgroup has sought to involve the Tribes in this component of public participation in many aspects of the work. In the process of developing this guidance, EPA sent a letter to tribal leaders asking for their recommendations on how the Agency might better identify EPA actions with "tribal implications" as defined by the Executive Order, and how the Agency might best consult with Tribes for these various actions. The workgroup also solicited individual advice from tribal representatives in several workgroup sessions. The tribal representatives are elected tribal officials or duly appointed to represent their tribe in an advisory capacity to the workgroup. The tribal representatives and their alternates were chosen by the tribal members of the Regional Tribal Operations Committees (RTOCs) for those regions that have RTOCs. Finally, once EPA develops a draft guidance on Executive Order 13175, it will be distributed for comment to all interested parties, including all federally-recognized tribal governments.

As stated above, part of the work conducted by the Executive Order 13175 workgroup entails identification of agency actions with tribal implications. Along with activities undertaken under statutes under EPA's authority such as the Clean Air Act, analysis is undertaken for agency actions with tribal implications under other statutes.

Abenaki Representative, Portland, Maine:

As a general rule, Indian groups seeking reversal of prior termination or seeking recognition via the BAR process or legislative means, or having State but not Federal status, have no relationship with the EPA. These groups are, by definition, minority, low-income, and underserved. The EPA can establish a process to explore mechanisms to establish relationships with Indian groups which is not dependent upon a status finding by the BAR, or other status findings.

Specifically, the EPA could contact the Abenaki of Western Maine concerning Western Maine water quality, species recovery, dam removal or abatement, and other issues, including volunteer monitoring activities.

Where State law claims to be the controlling authority, e.g., under the Maine Settlement Act, and has the effective result of exposing Tribal executives to quasi-criminal liabilities for maintaining a distinct relationship to the EPA, the EPA may evaluate the core jurisdictional issues and the effective access the affected Tribes have to Federal relief for State conduct. Specifically, the EPA could contact the Passamaquoddy, Penobscot, and Maliseet Tribal Executives and establish a process to explore mechanisms to ensure unrestrained access to the Federal courts, even when a preemption claim is advanced by Maine.

St. Regis Mohawk Tribe Environment Division, Akwesasne, NY:

Public involvement in decision making processes is an integral part of making policy decisions successful. By including stakeholders in decision making processes, tribal and federal agencies alike, "foster a spirit of mutual trust, confidence, and openness between the Agency and the public."

Throughout the draft policy, EPA places a number of communication mechanisms as possible ways to keep the community informed and also keep individuals as active participants. Information and outreach programs play key roles in doing such. In Akwesasne, we have been developing a plan to involve our community members into environmental issues that directly affect their health and public health in general.

As stated in the draft policy, "lack of adequate participation or lack of effective means for participation can result in agreements or policies that do not necessarily reflect the interests of communities or constituencies that will be most impacted by them." Certainly, in Indian Country this is what we don't want because of the highly sensitive issues such as PCB contamination, lost habitat for medicinal plants, and fish advisories.

It appears as though EPA has identified the main components necessary to incorporate public participation in regard to its public policy and other sensitive issues affecting its constituents. Probably the most important being the actual planned and budgeted activities for public involvement.

Certainly, utilizing creative means to get intended messages across is paramount in smaller communities where technical and electronic information may be limited or unavailable. EPA will need to make a more concerted effort in reaching out to those minority, low-income

communities whose voices may not be heard in favor of more populated areas. I don't think it can be understated how important it is to write documents in plain language and when appropriate in other languages, as well.

One of the more important tools included in the draft policy was Alternative Dispute Resolution (ADR). In my experience, ADR can create and maintain a dialogue between parties who disagree on a controversial issue. It can also cut down on courts costs and be a quicker instrument in reaching consensus, or at the least, understanding of the other sides' perspectives.

Other actions that can be imperative in public participation are providing timely, feedback to the public. The public can become frustrated when agencies don't get back to them when they've participated in a specific project, study, or have provided comments to a document. Therefore, giving back to the community in terms of study results or results of comments they've provided is a way to keep the public involved in the future.

As environmental programs go, we know that public involvement is an integral part of making them successful. However, just as important is evaluating our efforts with public involvement in environmental issues and policy.

All in all, EPA through this draft policy identified, comprehensively, the components necessary to engage the public to become part of environmental solutions within their respective communities. It is the hope within Indian Country that EPA remains committed to reaching out to minority communities across the board. It will take a more concentrated effort on EPA's part to make this draft policy a reality within these smaller communities.

Bison Land Resource Center:

Our organization provides support to dozens of other organizations, and I have worked with the NEPA process for over twenty years. While the process has always had some shortcoming as far as the involvement of minority and low-income populations, recently we have seen an alarming trend in our area toward limiting the general public's ability to be involved in the process. Our comments will address these two issues.

At its most basic, EPA's public involvement process must allow easy stakeholder access to information, prior notice of opportunities to provide input, and input settings that encourage involvement by a broad cross-section of the public. In our area, one of the greatest barriers is a language barrier, as our largest minority group is the Lakota/Dakota (Sioux). When events are held in English without translation, many members of this group are effectively excluded. Similarly, when local reservation publications and Lakota-language radio stations are not provided full information for public involvement, these populations are excluded. For the public to truly be involved, the general public must be notified of environment-related activities in a timeframe and in a manner that makes input not only possible, but likely.

In our area, poverty and low population density provide major challenges to public input. South Dakota, our primary area of work, is usually the lowest or second-lowest state in per capita

income. Reservation populations are the lowest income areas within the United States. Low population density means large distances must often be traveled by those wishing to provide comments at public hearings or to get copies of documents from libraries. Due to low-income, a large proportion of reservation residents can't afford phones, much less computers or cars. The vehicles that are available are often used by extended families and are famous for not running well (this is a matter of much lore, if you ever want some interesting stories). In sum, this means that, if someone has or can find a vehicle that is road-worthy for distance travel, the cost of a few gallons of gas may mean the difference between paying a bill and not paying a bill, or between buying a child shoes and not buying shoes.

Recently, a series of public hearings was held in our area by the Surface Transportation Board (STB) on the proposed expansion of the Dakota, Minnesota, and Eastern Railroad (DM&E). None of these hearings was held on a reservation. In fact, none was held within 50 miles of a population center on the Pine Ridge Reservation, which would be most directly effected. This issue was raised with the STB, but was basically ignored until after the public hearings were completed. At that time, a quickly-planned, poorly-advertised meeting was held on the Rosebud Reservation. This was not included in the Draft EIS documents or other publications related to public input. To try to compensate for the lack of opportunity for public input, the Oglala Sioux Tribal Government co-sponsored an event to gather public input, including providing translation and transcription. Tribal governments should not have to take on this role - it should be taken on from the beginning by the lead agency, and the EPA and CEQ should insure that it happens.

Another issue regarding public involvement that is raised repeatedly by reservation residents is that those who participate, particularly in public hearings, are expected to follow agency rules that are not culturally sensitive. For the Lakota, this includes limiting people's time for input and cutting people off at a certain time limit. This is considered extremely rude in Lakota culture. Elders, in particular, have the privilege and the right to talk as long as they please without interruption. Anyone can talk until they are done with what they have to say, and questions are held until the person is finished. The person finishes by thanking listeners, and that is the sign that someone else may speak.

An extreme lack of cultural sensitivity is also shown when people do not recognize native nations as just that -- nations. Additionally, in what is generally known as "western South Dakota," the Lakota Nation has land rights under the 1868 Fort Laramie Treaty that supercede the rights of the state or any entity that might propose an activity that would have environmental impacts. Again using the DM&E situation as an example (although this happens repeatedly), it is extremely uneducated to plan a major project across Lakota lands, work for several years to get federal permission, and then "tell" the Lakota about the plan. Instead, the Lakota, as first landholders, should be "asked" if the project would be okay with them first. Then, if permission to proceed with a plan is given, federal agencies should be brought into the picture.

One way the EPA could improve the situation would be by taking the lead in this matter. This would simply mean implementing its existing policy toward Native Americans in a manner that includes giving other federal agencies notice that anyone proposing a project must approach

native nations before proceeding further. This approach should be done as one would approach any other international government -- as someone requesting a favor, not as someone implementing an existing plan.

In addition, the EPA can educate others to the fact that the exact nature of behaving in a culturally sensitive manner varies from one native group to another and should be researched before proceeding. The examples I have provided for the Lakota are just that -- examples for one of over 500 Native American groups within the United States. Cultural issues vary tremendously from place to place, and any company that wants its project to succeed would do well to find out what behavior is appropriate before approaching any native nation. Federal agencies can take the lead by suggesting this when approached by companies with proposals. Each EPA Region could maintain a list of tribal members from each native nation within its borders who are willing to act as consultants to companies on proper protocol.

The other key issue involving public involvement has to do with what Native American entity is contacted and sent project materials. In my experience, agencies commonly send Draft EIS's to federally-recognized tribal governments. I have heard repeated stories of tribes not receiving these documents. There are a number of reasons this might happen, and agencies need to be aware of them.

For example, I have worked with the Bureau of Indian Affairs' list of tribal governments. This is often seriously outdated. Many tribal officials don't have offices, and the addresses provided by the BIA are for homes. There is a lot of turnover in tribal officials, so a DEIS may never get passed along to the next incumbent. Even when there are offices, it is common for a defeated tribal government to take all documents with them, so there is little or no institutional memory. Just because a reservation's government got scoping documents and participated in that part of the NEPA process doesn't mean that those in power at the time of the DEIS have any idea what's going on.

Even when there are offices and when documents are received by the Tribal Chair, tribal governments often have little or no environmental expertise. In a study I completed recently, the average tribal government had four environmental staff, and they were working on six major environmental issues. Many have no environmental staff at all. So the Tribal Chair might receive a notice or a DEIS document and have neither the time nor the information necessary to determine its importance. Basically, the EPA must educate tribal governments repeatedly and must go out of its way to involve tribal entities in order to gain real participation.

The other factor that complicates gaining public involvement by Native Americans is that many federally-recognized tribal governments are not accepted by some or most members of that native nation. When an agency sends notices only to the federally-recognized tribal government, it may not really be providing information to the public in the sense that it is reaching a representative body with responsibility to its constituents. It may be reaching an elite that could potentially gain financially if a project proceeds -- and that knows the public would probably oppose the plan. Most tribal governments have nothing resembling the Freedom of Information Act, so tribal leaders are free to keep information secret. Rectifying

this means knowing the situation on each reservation and involving traditional (pre-United States) governments, federally-administered reservation programs, citizens' organizations, and other appropriate bodies.

Turning to our second major topic area, the more general limitations on public involvement, we would first like to note that gaining true public involvement appears to be less important in recent years. Agencies are sometimes flippant about this, as when a representative of the Surface Transportation Board was asked by a member of the media for an update on the NEPA process in the DM&E matter. The official would not indicate whether the EPA's recommendations for further study would be implemented and told the reporter that there was "nothing further the public needs to know at this time regarding the DM&E application for expansion." Obviously, the public wanted to know more, or the reporter would not have called. It was not the official's role to determine the public's "needs." The NEPA process is supposed to be open to the public.

Another major problem in the last several years has been the move toward printing fewer copies of DEIS's. This seems like a great idea from an environmental angle, and at first I avidly ordered my CD-ROMs for NEPA documents. The problem is that CD-ROMs are not useful for those who want to do more than take a leisurely stroll through a few pages of Executive Summary. One cannot compare maps and the pages describing them, look at the main text and supporting appendices, or cross-check information from section to section without essentially printing out their own copy from the disk --which is unrealistic and, in some cases, impossible.

Some CD-ROMs, such as the one for the DM&E project, are so slow as to be unusable. Electronic access may be present for those with computers, but in this case it was also so slow as to be unusable to members of the public. Only those whose sole life focus was reading the DEIS were able to access larger portions of the document electronically. What's worse, when people discovered that their CD-ROMs were unusable and websites for the documents were useless, they were not able to get a paper copy of the DEIS. The STB would not send a second DEIS in any form to someone who had already received one. This makes sense in terms of conserving agency resources and tax dollars in most situations. But in a case where public involvement is the law of the land, it does not make sense, after all.

In a rural area such as South Dakota, especially when a long and/or complicated environmental document is involved, library access is not the solution to these problems. Distance alone will keep most people from being able to provide meaningful input, with people in most areas of the state having to travel at least 50 miles to get to a repository library. Library access should be provided, but additional copies of documents should also be available to late-comers, and comment periods should be extended. Anyone who has a job or a family is not likely to be able to spend several weeks (assuming they read fast) in a library reading a lengthy DEIS. People with both jobs and families would find this a hopeless task.

In South Dakota, a full 10% of the population has not just one, but two jobs. And we also have the highest percentage of women with children working outside the home. So providing true

public involvement here means overcoming economic, time, and distance hurdles. The EPA should take these types of factors into account in determining public involvement needs and vary its procedures according to regional realities.

Another regional reality is weather. I cannot speak for people from other regions, but I know that in the northern Great Plains, travel may basically shut down for long portions of the winter. Out-of-town travel may be impossible, uncertain, or dangerous six months of the year, especially for the youngest and oldest drivers.

Again, the DM&E situation provided one of a number of examples. The Draft EIS comment period took place during winter months, even after it was extended. It happened to be a rough winter, meaning that much of eastern South Dakota was blanketed in snow from mid-November until April, at which time we had floods that hampered travel and coated miles of countryside. I was vitally interested in this process but, like everyone else, I was unable to observe the landscape along the proposed route during the comment period because it was covered with snow. Because I had not gathered information on the proposed route before the DEIS came out, I could not give adequate input -- BUT no one in the public was given the proposed route until the DEIS came out. The STB refused many requests for this information while they were writing the document. So public input was seriously hampered.

Again, this is a regional reality that needs to be taken into account in planning public involvement. For our largely agricultural area, planting, calving, and harvest are also poor times for public involvement. Agencies should know this and plan or extend comment periods accordingly.

In summary, we would like to emphasize again that EPA's public involvement process -- and the processes it oversees in other agencies -- must allow easy stakeholder access to information, prior notice of opportunities to provide input, and input settings that encourage involvement by a broad cross-section of the public.

**Response:** EPA's current training on "Working Effectively with Tribal Governments" includes information regarding appropriate culturally sensitive behaviors.

Citizen #89:

In reading your information, I was quite surprised and offended that our government would use such a racist policy in dealing with non federal agencies. I feel that all citizens should be treated equally under the law, and not segregate American Indians for special treatment. Assuming that this is a legal procedure, I ask that this special treatment be limited to only long standing reservations. I ask that your Indian policies not apply to any tribes or lands not found within the boundaries of a long standing reservation. I think State & Local government rights should override any Tribal rights since States & Local governments represent all citizens, not just citizens of a particular race.

**Response:** Since 1984, EPA has adopted an Indian Policy consistent with an overall federal position which stresses two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on



a "government-to-government" basis. EPA's relationship with Tribes includes a recognition of the right of tribes as sovereign governments to self-determination, and an acknowledgment of the Federal government's trust responsibility to the Tribes. One manifestation of this policy is EPA's recognition of tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with agency standards and regulations.

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## 20. ENVIRONMENTAL JUSTICE PUBLIC COMMENTS

In the preamble to the draft policy, the Agency asked specifically for public comment on "How EPA can improve involvement opportunities for minority, low-income and underserved populations." Related comments follow; Agency responses appear in other sections of this document grouped with comments on various sections of the Policy. Many of the suggestions contained in the following comments urge partnering with organizations of all kinds. The following was added to the Goals section: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement."*** Many of the ideas will be included in training for EPA staff.

The Policy contains a new section, "How Does the Policy Relate to Environmental Justice?" states the following:

***"This Policy complements and is consistent with EPA's environmental justice efforts. "Environmental justice" is the fair treatment of people of all races, cultures, and incomes, including minority and/or low-income communities and Tribes, with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision-making processes of the government. Environmental justice is achieved when everyone, regardless of race, culture or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn and work. This includes ensuring greater public participation in the Agency's development and implementation of its regulations and policies. (Memorandum from EPA Administrator Christine Todd Whitman, dated August 9, 2001, "EPA's Commitment to Environmental Justice") [See also, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994)] Thus, ensuring meaningful public involvement advances the goals of environmental justice."***

**Improving involvement opportunities for minority, low-income and underserved populations (including Tribes)**

Golden Gate University, Environmental Law and Justice Clinic:

Despite the fact that in the *Introduction* the Draft Policy says, "we should not accord privileged status to any special interest...", it accurately recognizes in its *Purposes, Goals and Objectives* section the need to give, "extra encouragement to and consider providing assistance to some sectors, such as minorities and low income populations... which may have fewer opportunities or resources to participate."

Often times, members of these communities suffer disproportionate disparate impacts from numerous forms of pollution and toxins. Furthermore, they are usually at a disadvantage when speaking out against potentially detrimental industry actions, because of limited funding, and limited access to information about the specific nature of the pollutants. Additionally, necessary scientific studies to support their positions are frequently unavailable to them. This can also be attributed to lack of funding, as well as other factors such as non-representative sample populations in these studies. These are just a few reasons why such communities may not be actively involved in the public comment process. However, their lack of participation, or silence on the matters, should not be read or interpreted as lack of concern about the issues that affect them.

The Draft Policy offers many positive and concrete steps that can be taken in attempt to counteract this situation. Some of these include early and ongoing opportunities for involvement in the process, increased notice of public comment periods in a wide range of places, notification to all known stakeholders, as well as attempts to identify unknown stakeholders, public meetings at accessible times for those who work during the weekdays, and possible funding and resources to those who qualify. We would strongly recommend their inclusion in the final Policy. Particularly in regards to the issue of funding, we believe that some form of public participation grant is absolutely essential to facilitate adequate citizen involvement. This funding should be equivalent to what interested private parties spend in the process.

The McNulty Group:

How to improve involvement opportunities for minorities, low income, and underserved populations. The answer to these issues is in techniques. These are questions that should --no, MUST-- be asked for \*every\* project, and answered effectively by action. However, the question and answer here involves techniques, and probably has no place in a "policy" at least as stated here. A statement that expresses the importance of hearing from all potentially affected "populations" or "publics" would be appropriate, but selecting just a few for emphasis in a general policy statement is not appropriate.

City of Madison, Wisconsin:

It has been my prior experience that municipalities as a whole have been under represented during the drafting of federal regulations. If we want to improve the participation of minorities, low-income and under served populations while strengthening EPA's commitment to early meaningful public involvement, I strongly recommend that the local units of government be given a stronger voice during the rulemaking process.

Georgetown University, Government Department:

...grants can and should be provided to organizations whose sole/main purpose is to increase "civic capacity," i.e., the ability of people to communicate with public officials and help to govern their own lives. This small grant program could be expanded to include both small and medium size grants (i.e., anywhere from \$5000 to \$100,000) for work on building civic capacity. Who could help you with such implementation? I would also argue that there are political scientists in each of the ten EPA regions that have expert knowledge about citizen participation (about who participates, who doesn't, and why). Furthermore, many of these political scientists have the skills to help EPA develop such programs, tailoring the "Civic Capacity Grants" somewhat to the particular concerns in any given region. For a further idea of how such a program could be structured, you may want to look into an innovative program being done at the local level in Arlington County, Virginia. The program, "The Arlington Neighborhood College," attempts to encourage underserved members of Arlington to become a part of the larger group of citizens actively involved in civic matters here in their community --- by giving these citizens skills through training exercises in small-group and large-group settings.

National Organization for Mexican American Rights:

We think it's imperative to include our community in EPA decision making. It is all for naught if we aren't at the table. EPA needs high-level Hispanics in the Agency, and then you won't have the same problems communicating with us. If you want to communicate with us, we need to be at the table for our needs to be entered into the equation. EPA has failed to employ Hispanics in positions where they should have such as [EPA liaison] in the US Embassy in Mexico City, management in EPA's US/Mexico Border Office). If we put our comments on record, we can later hold EPA accountable. Will all the groups be given the document when it is finalized? Can a citizens' group be formulated to help advise? Why not have a meeting here in San Antonio for EPA to give us all kinds of information we need about issues here, as everyone has been asking about, particularly about Kelly. We need the straight story.

Wisconsin Department of Natural Resources:

Understand cultural and other differences and barriers that affect the willingness and ability for people to participate in public involvement processes. Some of the specific comments listed above address this issue. This is another area that needs more development and education. EPA should fund research, training, development of methodologies, and projects that explore ways to connect with these populations. Once again, the International Association for Public Participation could be a key partner in such an effort.

The Groundwater Foundation:

I was especially pleased to see the agency's emphasis on audiences with limited access or traditional links to EPA rule making, enforcement actions, and regulatory and pollution prevention programs.

Sierra Club, Committee on Environmental Justice:

While some [contact] lists are under-inclusive, others are sometimes so broad in subject matter that community members are inundated with so much information and so many requests for participation that sorting through it all is too time consuming and difficult. Indeed this is a major problem for under served communities. In such communities, where participation rates are low, agencies look to the few individuals who are participating and ask them to do more rather than reach out to a wider community.

Delaware Nature Society:

It is prudent to recognize that traditionally underserved populations, minority populations, and other excluded groups need to participate in our public policy process. Ensuring their participation is an excellent goal.

Citizen #60:

The EPA needs to explicitly commit to implementing Environmental Justice policies and programs. There is great uncertainty about EPA's level of commitment even in the best of times. In the current political environment, it now appears EPA is ready to repudiate the few gains made over the last 5-10 years.

Citizen #8:

There are ways to ensure that the poor, the minority communities, the young, etc are paying attention: the agency must be willing to speak Truth to Power (generally, Power being a transnational corporation); the agency must be brutally honest about the likelihood of 'things going the way' that a majority of the 'outsiders' (ie the poor, the minorities, etc) would desire to see things go; & the agency could schedule hearings on evenings &/or weekends, when the unempowered have whatever brief opportunities they may have to comment in person upon a question or 'problem.' Beyond this, EPA could support legal services for the poor, knowing that, at some point, those services will likely be used to sue.

New York City Environmental Justice Alliance:

I urge EPA to give very serious attention to the comments it has received and to work strenuously in an effort to improve the agency's interaction with those who have traditionally been foreclosed from participation in that process. Adequate staffing will be critically important to ensure that the policy is fully and effectively implemented.

As is the case with the other potentially positive measures enumerated in the draft policy, any efforts to bolster participation by those in traditionally underserved communities will only be successful if they are fully implemented by agency staff, across the board. Thus, while the stated goals and proposed measures set forth in the draft are certainly encouraging, it is the implementation of those goals and measures that will truly determine the success of the new policy.

National Image, Inc.:

Hispanics need to be heard because of our issues. It seems strange that there's no Hispanic in EPA's Office of Civil Rights & only one in OEJ. We need to be able to talk to you. It's imperative that the government find out how to communicate with us & very necessary to bring

in more Hispanics in to work in EPA. You wouldn't have as big a problem communicating with the Hispanic community if you had more Hispanics working for you.

Miami University, Department of Communication:

EPA asks for input on involving minority, low-income and underserved populations. A generally effective way to do this is through personal contact with opinion leaders. For example, many African-American communities are heavily involved in their churches. Make personal contact and meet the minister/preacher and enlist his/her help in getting the community involved in the environmental issue EPA is addressing. This effort will be resource intensive, in that it may require a good deal of one-to-one communication with the opinion leader, but these efforts tend to be well worth it in the long-term. A respected person as a strong advocate of involvement will be more effective than all the letters and newspaper announcements you can produce.

Louisiana Department of Environmental Quality:

Pursuant to the Federal Register announcement, the EPA is particularly interested in obtaining comments on how it can improve involvement opportunities for minority, low-income and underserved populations and how it can encourage involvement opportunities in programs delegated or authorized to states, tribes, and local governments. In response to the request, the LDEQ makes the following recommendations:

- (1) The EPA should once and for all develop a meaningful and workable environmental justice policy;
- (2) The EPA should review existing public involvement policies, rules, regulations, and laws of states, tribes and local governments to identify and incorporate any existing measures that could be incorporated into the EPA's public involvement policy. Indeed, many state, tribal, and local governments have developed highly effective public involvement measures that could easily be melded into the EPA's public involvement policy.
- (3) The EPA should consider implementation of Louisiana- developed Environmental Justice panels. Additional information regarding these panels is enclosed.

Guild Law Center and Michigan Environmental Justice Coalition:

We are concerned, however, that the EPA has not explicitly recognized the central role of expanded public participation opportunities in preventing environmental injustice and protecting environmental justice communities from disparate environmental burdens. Both the Environmental Appeals Board and the EPA's Office of General Counsel have recognized that "early and ongoing opportunities for public involvement in the permitting process" is key to preventing environmental injustices. In re Chemical Waste Management, 6 E.A.D. 66, 73 (1995); Undated Memorandum from Gary S. Guzy, Office of General Counsel/EPA, to Steve A. Herman, Office of Enforcement and Compliance Assistance; Robert Perciasepe, Office of Air and Radiation; Timothy Fields, Jr., Office of Solid Waste and Emergency Response, and J. Charles Fox, Office of Water. The Draft Policy, however, does not direct EPA staff to determine whether any proposed actions have more significant or adverse effects on environmental justice communities or to make any effort to expand public participation opportunities where environmental justice communities are affected. We urge the EPA to include an explicit recognition of the increased importance of public participation in

environmental justice communities and to make additional efforts to ensure that such communities have sufficient information and assistance to make a meaningful contribution to the agency's decision making in such situations.

GLC and the MEJC believe that the Draft Policy must specify that more aggressive outreach and notification efforts are needed when a proposed action or decision may adversely affect an environmental justice community. In such circumstances, we believe the EPA should consider holding a public meeting just before or just after the beginning of the comment period to ensure that these communities are aware of the proposed action, its possible effect and their right to comment on the decision. The EPA could work with churches, community centers and social service organizations to plan and publicize these meetings.

Local Government Advisory Committee:

Secondly, the draft policy requires Agency officials to give extra encouragement and consider providing assistance to some sectors, such as minorities and low-income populations, or small businesses that may have fewer opportunities or resources to participate. Let the record show that many local governments, large and small, also would benefit substantially if afforded this "extra" effort.

Just Transportation Alliances:

People that fall into the category of minority, low-income, and underserved populations very often have the greatest barriers to active participation.

(1) Some of these barriers may be physical, i.e., they simply can not get to a meeting because they don't have transportation, they may not be able to take the time from work or family care, or they do not have a computer. These are in many ways simply logistical factors that can be overcome by canvassing, going to places they are already meeting (church, community center, etc.).

(2) Some of the barriers are more personal, i.e., distrust of government; a lack of confidence, etc. These barriers are overcome only as organizations with their community have the resources to build the awareness, skills, and confidence one person at a time. If EPA and other agencies truly want to include such people as active partners in the development of policy and/or local solutions, then the agencies have to consider strategies that include investment in the local organizations which are already engaged in building participation as well as new organizations that could do this kind of work.

Sierra Club, Piasa Palisades Group:

With those purposes and objectives outlined, The Piasa Palisades Group presumes that if there were small stipends available for the participants of the minority, low-income and underserved populations, then we might begin to see a larger influx of public involvement. Compensation money needs to be built into the proposal for citizens in poorer areas where environmental justice issues may or may not prevail. It could be presented in the form of mileage paid, per diems, stipends, or incentives. It would behoove the EPA to seek those interested participants in the early stages and ask what it would take, within reason, to keep their participation at a high level.

Citizen #78:

I submit that each and every local, state and federal government official receive a copy of the essay "Multiple Chemical Sensitivities Under Siege," reposted here with permission of Dr. Ann McCampbell. This essay may be posted, with Dr. McCampbell's permission having been given for such use, in an effort to involve minority groups, low-income field workers and underserved populations in their exchanges with pesticide regulation agencies. The EPA can encourage, promote and ensure more effective public involvement in state, tribal and local governments by recognizing the disenfranchised state in which pesticide-sensitive individuals themselves.

Lake County Health Department, Waukegan, Illinois:

Technical expertise and resources used by the EPA during the early process benefits the general public and, in particular, low-income groups that may not have financial means to independently evaluate alternatives or a selected option. A genuinely open and receptive environment established early and maintained throughout the decision process fosters public participation and encourages minority, low income and underserved populations.

Florida Department of Environmental Protection, Division of Water Resource Management:

Improve involvement opportunities for minority, low-income and underserved populations: We suggest that EPA outreach positions be placed in or near these types of communities, or that EPA send outreach staff to these communities. Whether urban or rural, most groups respond to direct contact. These communities historically and currently depend upon word of mouth from the respected individuals in the community. The purpose of the EPA outreach positions should be to help the community form its own representative group and provide guidance for their involvement. Look at the people in these types of communities as citizens with as much standing as everyone else and provide them the respect they deserve by acknowledging receipt of their comments and concerns in a forum readily available to them such as a local newspaper or TV (not cable). Unlike many other identified groups, they may need assistance to become involved. Help them establish a local support office where citizens can go to for information, such as the assistance provided by the National Resources Conservation Service (NRCS) offices, available in every county. Provide funds and equipment to support this necessary outreach effort. These communities need to see feed back or they will continue to "feel" frustrated and ignored. What they feel is important – perception is reality.

New York State Department of Health, Center for Environmental Health:

How EPA can Improve Involvement Opportunities for Minority, Low-income and Underserved Populations.

EPA specifically asked for suggestion of ways to involve more minority, low-income and underserved populations. We conducted a brainstorming session to gather ideas on this topic, and below is a list of suggestions. Comments are organized under main headings of the document.

Definitions

The draft Policy should include a definition of what constitutes an underserved population and, if necessary, a methodology for determining an underserved community.

2. Identify the interested and affected public.

§ Partner with local health departments. Often local health departments:

- know the people in the community;
- can provide information on how the community is likely to respond to an issue;
- can speak the language of most of the people in the community; and
- have a positive relationship with the community that could overflow to a "partner" agency.

§ Different programs within EPA should reach out to each other and to other Federal and State agencies for help in solving issues of how to reach a community. In many cases an agency may already be working with a community and the "new" program can gain insight about the community and receive help in building a relationship with the community.

§ Talk with WIC program coordinators to determine productive ways of reaching the community.

4. Provide information and outreach to the public.

§ As stated in our "General Comments Attachment", we concur with the draft Policy statement that EPA should "ensure that the public understands the legal requirements for Agency action...". We feel that in minority, low-income and underserved communities that special emphasis should be given to this. EPA should determine initially what the community knows about EPA. Do they know what the agency does? Do they know what the agency can and cannot do with regards to the program/project? Clarify any misconceptions and clearly state the policy/program goals and objectives emphasizing how this affects the community.

§ Use phone surveys to reach people who will not come to meetings.

§ Continue to use the Internet. This means of disseminating and gathering information will continue to grow.

5. Conduct public consultation and involvement activities.

§ The draft Policy states that EPA should "consider the appropriate use of third parties in the development and implementation of programs...". We concur with this statement and have the following suggestions about third parties that may be helpful. In addition, the groups/entities listed below could also be helpful in #2 (Identify the interested and affected public) and #4 (Provide information and outreach to the public.).

- Work with local and statewide environmental justice groups. Our state has a statewide environmental justice advisory group. It probably would be helpful for regional staff to be involved with such groups. They would build relationships and have a better understanding of environmental justice issues in the region.
- Consult with bilingual community members and ask them to serve as translators at meetings or during other activities.
- Engage students (particularly college undergraduate or graduate level) from the community and ask them to follow the issue and give suggestions about the community's perspective. This could include talking with residents, gathering their opinions, and reporting back to the agency. This activity could be for credit or for pay.
- Work with church leaders and leaders of local civic groups to determine what are the best ways to disseminate information and the format of the information (both written and verbal).
- Schools, churches, community centers, etc. could be asked to get involved in mobilizing the community to participate in EPA activities.
- Hire a community person to listen and speak for the community or portion of the community. This takes the pressure off people who might want to be involved in the issue but may not be



able to lose time from work.

§ Although it often is necessary to work with activists representing minority, low-income and underserved communities, the people who will be living with the program/project should be involved in the decision making process as much as the activists.

§ Often people have “barriers” that prevent them from becoming involved. Some barriers are physical/time restrictions such as a lack of transportation or need for childcare. An idea of a way to overcome transportation issues is to hold the meeting or event near the people’s homes (e.g. local school or church), or hold more than one session in different sections of the neighborhood. If childcare is an issue then hold meetings when children are in school or work with a church or a trusted civic group to provide childcare during the meeting. Some barriers come from preconceived ideas; for example new immigrants that come from countries with repressive governments have a general fear of government. In general, barriers may be more prevalent among minority, low-income and underserved populations and EPA should be aware from the beginning of a program/project if barriers exist and address them initially. Talk with community leaders and see if there are barriers that would prevent people from participating. Discuss suggestions for overcoming the barriers and building trust.

§ Many people in minority, low-income and underserved communities are not available during the traditional workday (9 AM – 5 PM) to go to the document repository, call agency staff, do site tours, etc. Staff should consider ways to make themselves and information about the program available outside the traditional workday.

§ We have found the following techniques helpful in making a meeting between a minority/low income community and the State more productive:

- hold the meeting/event in a familiar, comfortable location (e.g. school, church);
- provide food;
- have presenters that represent different racial backgrounds; and
- structure the meeting so there are plenty of opportunities for open discussions with a question and answer component.

#### Minnesota Pollution Control Agency:

Nearly any EPA decision to protect human health and the environment will find well-financed opponents. As discussed in the policy, those without financial interest are often least able to participate. A public participation challenge becomes balancing the strong involvement of a few special interest detractors against the minimal involvement of the broader public and environment that an EPA action is designed to protect (including those with no direct voice—such as children or the environment). I especially applaud EPA’s efforts to acknowledge and involve segments of the public that are often under-represented.

#### Shoshone Natural Resources Coalition:

The EPA can improve involvement opportunities for minority, low-income and the underserved population through early awareness and simplified explanations. Often times the general public is unaware of the potential effects the decisions made by the EPA will have on their community. These potential effects need to be expressed when meeting notices are announced. This needs to be done through all available options including newspapers, radio, flyers etc. If more of the general public were aware of what could happen to the community, they would show a

greater interest in being involved. They need to know how these decisions will affect them personally.

Environmental Defense:

By employing strategies such as improving its outreach skills, reaching out to different constituencies, working with local community groups, and soliciting feedback regularly, the Agency will be able to increase the number of comments it receives, especially from low-income, minority, and under-represented populations.

Children's Environmental Health Network:

The Agency particularly sought comments on how to improve involvement opportunities for minority, low-income and underserved populations. As discussed below, the Agency must undertake aggressive outreach efforts to these populations, and must provide adequate technical and financial resources for these groups and individuals. Such support historically has not been adequate, and we are concerned that one of the few programs designed to address these concerns directly, EPA's EMPACT program, has been completely eliminated from the 2002 EPA budget.

Sierra Club, Committee on Environmental Justice:

Public participation indeed takes time and money. But decision making takes even more time (in the form of delays) and more money (for example, in litigation costs) when the public participation component fails. Moreover, it is in the planning and budgeting area in which the most gains could be made in terms participation by low income and minority communities. Such communities have special needs that can only be met with detailed planning and appropriate budgeting.

Michigan Environmental Council:

EPA regional leadership should develop and maintain lists of consistent strategic partners who can serve as conduits for public involvement opportunities and announcements. Each list should include state agencies, trade organizations, non-governmental organizations, corporate interests and private citizens. These groups should understand that they are partners in the effort to build public awareness of pending EPA decisions. Partners should be provided with notification of processes about to begin and basic instructional materials regarding the public participation methods for dissemination to their constituents. Particular attention should be paid to the development of partners representing and including minority and low-income populations. These cross-project associates will help generate consistent participation from underserved communities and enhance the EPA's list of concerned citizens.